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**Electronic Filing - GPA's Motion in Limine**

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Thu, May 8, 2025 at 5:00 PM

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Hafa Adai Mr. Jerrick Hernandez and Ms. Mariella Cruz,

Please find attached GPA's Mtn in Limine. Please acknowledged receipt. Thank you.

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**GPA Motion in Limine.pdf**

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**OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS**

IN THE APPEAL OF	)	APPEAL NO. OPA-PA-21-012
	)	
Graphic Center, Inc.,	)	
	)	<b>GPA’S MOTION IN LIMINE</b>
Appellant.	)	
_____	)	

**I. Introduction**

This matter comes before the Public Auditor on the Superior Court’s decision and order of October 29, 2024, remanding to the Public Auditor for a decision as to the completeness of the procurement record. At the status hearing before the Public Auditor on May 2, 2025, counsel for appellant Graphic Center, Inc., indicated that he intends to seek to reopen the hearing on the merits in this procurement appeal in order to introduce additional testimony of various witnesses. The Guam Power Authority (GPA) moves in limine to prevent the reopening of the record and exclude the introduction of new evidence because, at the hearing on the merits, the parties developed before this tribunal a full record upon which the Public Auditor can rely to render a decision as to completeness of the procurement record.

## **II. Factual and Procedural Background**

Graphic Center submitted a proposal in GPA-RFP-21-002, a re-bid for Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing issued on May 13, 2021. GPA selected a rival bidder, InfoSend, for award. Graphic Center lodged a protest, which GPA denied.

### **A. Proceedings before the Public Auditor.**

Graphic Center appealed the denial of its protest to the Public Auditor, including a claim not presented to GPA, namely, that InfoSend's proposal omitted a required Exhibit A and responses to the questions therein. The Public Auditor held a hearing on the merits on February 4, 2022, and heard testimony from seven witnesses. Graphic Center presented the testimony of five witnesses in its case-in-chief: Jesse Rosario (#1) and Chris Biolchino (#2), both of Graphic Center; and GPA employees James Borja (#3), John Kim (#4) and Dawn Fejeran (#5). GPA in its case-in-chief presented two witnesses from InfoSend, Kelly Law (#6) and Matt Schmidt (#7). The two witnesses from Graphic Center also testified on rebuttal.

Following the hearing, the Public Auditor ruled in favor of GPA. *In the Appeal of Graphic Center, Inc.*, Appeal No. OPA-PA-21-012, Decision (Mar. 25, 2022). Specifically, the Public Auditor found that InfoSend was capable of meeting the RFP's requirements, GPA's evaluation committee properly evaluated the proposals, and Graphic Center's claim that InfoSend allegedly submitted an incomplete proposal was untimely. *Id.* at 9, 10.

### **B. Proceedings in the Superior Court.**

Graphic Center sought judicial review in the Superior Court by filing a complaint on April 5, 2022. In its complaint, Graphic Center alleged facts gleaned from the testimony of Kelly

Law of InfoSend and Dawn Fejeran of GPA. *See, e.g.,* Ex. A (*Graphic Center, Inc. v. Guam Power Auth.*, Super. Ct. of Guam Case No. CV0202-22, Compl. ¶¶ 44, 45, 47, 48 (Apr. 5, 2022)).

Claiming that the Public Auditor’s decision was arbitrary, capricious, clearly erroneous, or contrary to law, Graphic Center faulted the Public Auditor for:

- (1) finding that InfoSend’s bid complied with the RFP and that GPA properly accepted InfoSend’s bid as responsive;
- (2) affirming GPA’s finding that InfoSend was the best qualified offeror in the absence of a procurement record documenting the basis for exempting InfoSend from compliance with the RFP;
- (3) finding that GPA applied the correct criteria to evaluate the offerors; and
- (4) affirming GPA’s evaluation committee scoring of the offerors’ bids.

Ex. A (Compl. at 6, 8, 10, 11).

In accordance with the Superior Court’s scheduling order of December 22, 2022, Graphic Center wrote to counsel for the Public Auditor and designated for use in Case No. CV0207-22 the testimony of only two of the witnesses at the OPA merits hearing, James Borja and John Kim. *See* Ex. B (Graphic Center Letter to OPA, Feb. 3, 2023). The OPA submitted certified transcripts to the Superior Court on March 8, 2023. Transcripts of the testimony of other witnesses who had testified regarding InfoSend’s submissions and the procurement record were not included in the record submitted to the Superior Court.

### **C. The Superior Court’s decision and order.**

After the parties briefed the issues and presented them at a hearing, the Superior Court issued a decision and order in which it ruled that the Public Auditor properly found that Graphic Center’s claim about InfoSend allegedly incomplete proposal was untimely and that GPA correctly used the evaluation criteria announced in the bid. Ex. C (*Graphic Center, Inc. v. Guam Power Authority*, Super. Ct. Court Case No. CV0207-22, Decision & Order at 4, 5 (Oct. 29, 2024)).

But the Superior Court also found that “InfoSend did not include all of the required information in their initial response to the RFP”. *Id.* at 6. The court based this conclusion on Graphic Center’s argument that “there is evidence from a GPA employee that InfoSend was granted an exemption by GPA which prevented its disqualification. . . . [T]he procurement record contains no explanation as to why InfoSend’s offer was allowed to continue while missing key documents”. *Id.* Because the Superior Court was unable to “see[] whether Graphic Center sufficiently showed to OPA that missing elements of the record were ‘material’ or thwarted judicial review,” the court “remand[ed] this matter to the OPA for further agency investigation and record development to determine the materiality of the information missing from the procurement record.” *Id.* at 7.

Graphic Center now seeks to reopen the hearing on the merits before the OPA to develop a record that already exists. Graphic Center may also intend to conduct additional discovery. GPA moves the Public Auditor in limine to prevent this unnecessary attempt at garnering further delay.

### **III. Argument**

#### **A. Graphic Center should not be allowed to profit from its failure to order a transcript of the testimony that would have permitted the Superior Court to rule on the completeness of the procurement record.**

“When a case is remanded for a specific act, the entire case is not reopened; rather, the lower tribunal is only authorized to carry out the appellate court’s mandate and may be powerless to undertake any proceedings beyond those specified.” *Moore v. Moore*, 576 S.W.3d 15, 21 (Ark. 2019). If a reviewing court remands a case with specific instructions to investigate and develop the record regarding apparently missing information, a lower tribunal should normally comply with the reviewing court’s order “to ensure that the [tribunal]’s decision is in accord with that of

the appellate court.” *Id.* The tribunal, however, “must implement both the letter and spirit of the mandate, taking into account the appellate court’s opinion *and the circumstances* it embraces.” *Id.* (emphasis added).

In this case, the Superior Court ruled for GPA and remanded to the Public Auditor only for the purpose of exploring the issue of the alleged missing procurement records. Graphic Center’s argument before the Superior Court that the procurement record was incomplete was based on the supposed existence of an exemption granted to InfoSend. The alleged exemption allowed InfoSend not to submit the Amendment with its proposal and prevented InfoSend from being disqualified. On remand, the OPA should address only the alleged missing exemption.

In its opening and reply briefs to the Superior Court, Graphic Center referenced the testimony of Dawn Fejeran and Kelly Law. *See* Exs. D & E (Case No. CV0202-22, Opening Br. at 6 (Aug. 29, 2024) & Reply Br. at 3 (Oct. 11, 2024)). In support of its arguments regarding these witnesses’ statements, Graphic Center cited to its own complaint, rather than the hearing transcript. *See id.* But allegations in the complaint are not evidence, particularly since GPA in its answer denied all material allegations. *See* Guam R. Civ. P. 8(d) (“Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading.”); *see generally* Ex. F (Case No. CV0202-22, Answer (June 1, 2022)). This left Graphic Center with the burden to prove its allegations. By not ordering the relevant parts of the transcript, Graphic Center prevented the Superior Court from accessing relevant information and making an informed decision about the alleged missing procurement record.

When, as here, the reviewing court is unaware of the contents of the record below, the general rule that a lower tribunal must strictly follow the reviewing court’s instructions on remand

should give way. Only then can the lower tribunal implement the letter and spirit of the mandate. When, as here, the Superior Court was unaware, when it remanded the case for further exploration of the issue, that the Public Auditor had already explored the issue and made a proper record, the Public Auditor should refrain from reopening the hearing on the merits and/or allowing Graphic Center to conduct additional discovery. Instead, the Public Auditor should grant GPA’s motion in limine and direct the parties to use the existing record to make their arguments.

**B. Permitting Graphic Center to reopen the hearing and conduct discovery will result in the submission of unnecessary cumulative evidence while causing further undue delay.**

Procurement appeals to the Public Auditor are normally conducted in a manner that is “as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure”. 2 GAR, Div. 4 § 12108(d) (governing OPA hearing proceedings). Although the use of formal rules is not required, the rules themselves may provide valuable guidance.

Rule 403 of the Guam Rules of Evidence provides: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Guam R. Evid. 403. In this case, at least two witnesses have already testified about facts concerning the alleged exemption. Graphic Center, through its intent to conduct additional discovery and reopen the merits hearing, will present the Public Auditor with needless cumulative evidence of facts already found in the record that exists from February 2022.

Moreover, at the time it initiated its bid protest, Graphic Center held the contract for printing, mailing and processing GPA’s customer bills. Due to the ongoing litigation, the

solicitation for these services has been stayed for the past five years. As a result, Graphic Center’s contract has been extended again and again, year after year. Thus, Graphic Center has every incentive to incur delays. The Public Auditor can put a stop to the undue delay by expediting this matter and ordering the parties to use the existing record which is complete and needs no supplementation.

Remand does not mean that the parties get a do-over to accomplish what they wish they had done on the first go-round. The parties here have already had their chance to conduct discovery, propound testimony, and introduce evidence. The Superior Court’s remand instruction rests on a flawed understanding of the facts that results from Graphic Center’s failure to present the court with a complete record on review. The Public Auditor should not allow Graphic Center to do what it already did or should have done on the first iteration of this case and should instead grant GPA’s motion in limine.

**C. Graphic Center cannot meet the standards for reopening evidence.**

As discussed above, Graphic Center’s litigation strategy prevented the Superior Court from reviewing the actual evidence developed before the OPA. It is for this reason that the Superior Court remanded the matter for further investigation. It would not otherwise have done so. Because the record that the Superior Court wants to see “developed” already exists, the Public Auditor has the discretion to decide whether to reopen the evidence on remand.

In *Smith v. United States*, 834 F.2d 166 (10th Cir. 1987), the Tenth Circuit Court of Appeals identified six factors to be considered when determining whether to reopen evidence:

- (1) whether trial is imminent,
- (2) whether the request is opposed,
- (3) whether the non-moving party would be prejudiced,



- (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court,
- (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and
- (6) the likelihood that the discovery will lead to relevant evidence.

*Id.* at 169 (citing *Howze v. Jones & Laughlin Steel Corp.*, 750 F.2d 1208, 1213 (3rd Cir. 1984); *Wilk v. Am. Med. Ass’n*, 719 F.2d 207, 232 (7th Cir. 1983); *Geremia v. First Nat’l Bank of Boston*, 653 F.2d 1, 5-6 (1st Cir. 1981)).

The facts in this case do not support reopening the record. First, trial is not imminent, it is over; all that remains is for the Public Auditor to decide one issue. Second, GPA opposes the reopening of evidence. Third, GPA would be prejudiced by the reopening of evidence because the events in this case occurred many years ago and witnesses’ memories have faded in that time. Fourth, both parties had ample opportunity in the earlier proceedings to obtain evidence to make their case. Fifth, there is no need for additional discovery since the record is complete. And sixth, discovery will only lead to cumulative evidence.

Graphic Center has no particular reason for demanding further discovery or a continuation of the merits hearing in this case. Additional testimony is not required and there are no gaps in evidence. The Public Auditor should therefore grant GPA’s motion in limine.

#### **IV. Conclusion**

In light of the foregoing, the Public Auditor should grant GPA’s motion in limine and not reopen the hearing on the merits or allow Graphic Center an opportunity to introduce new evidence. The evidence at issue was already presented at the merits hearing, but withheld from the Superior Court on review—it is this which explains the Superior Court’s order. The Public Auditor

can best adhere to the spirit and letter of the court's instructions on remand by holding the parties to the existing record.

Respectfully submitted this 8th day of May, 2025.

*Attorney for Guam Power Authority*

A handwritten signature in blue ink, appearing to read "M. Woloschuk", written in a cursive style.

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**Marianne Woloschuk**  
GPA Legal Counsel

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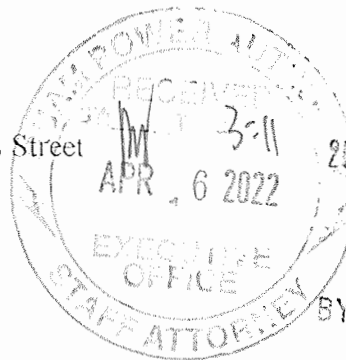
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*Graphic Center, Inc.*



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OF GUAM  
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**SUPERIOR COURT OF GUAM**

GRAPHIC CENTER, INC., )

Plaintiff, )

v. )

OFFICE OF PUBLIC  
ACCOUNTABILITY, GUAM )  
POWER AUTHORITY, THE )  
TERRITORY OF GUAM and )  
INFOSEND, INC., )

Defendants. )

CIVIL CASE NO. CV 0207-22

**VERIFIED COMPLAINT**

**I. INTRODUCTION**

1. The civil action brought under 5 G.C.A. § 5707 and 5 G.C.A. § 5480 arises out of Guam Power Authority ("GPA") Request For Proposal GPA-RFP-21-002 ("RFP"), issued on May 13, 2021 seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing, a copy of which is appended and marked as exhibit "1"

2. GPA issued Amendment No. 1 to the RFP on May 28, 2021 which contained approximately seventy (70) questions to which offerors were to respond (a copy of which is appended and marked as exhibit "2") and identified in the RFP as Exhibit A under § G, 2.12 of the RFP and designated as a Required Form ("Amendment"). See Decision, OPA-PA-21-012, ¶ 8.

3. Graphic Center, Inc. ("Graphic" or "Appellant"), Infosend, Inc. and Moonlight BPO

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DATE: 4/6/22

TIME: 10:25 AM CPM BY: [Signature]

FILE NO OPA-PA: 21-012

**FILE COPY**

**Exhibit A**

responded to the RFP (“response or bid”). See Decision, OPA-PA-21-012, ¶ 9.

4. Infosend’s response did not contain the Amendment nor did it contain answers to the questions propounded in the Amendment.

5. On August 11, 2021, GPA disqualified Moonlight BPO as an offeror for failing to provide an Affidavit of Disclosure of Major Shareholders, a required form. See Decision, OPA-PA-21-012, ¶ 10 & 17.

6. On August 11, 2021, GPA selected Infosend the best qualified offeror. See Decision, OPA-PA-21-012, ¶ 17.

7. On August 18, 2021, GPA notified Graphic that Infosend had been selected as the best qualified offeror. See Decision, OPA-PA-21-012, ¶ 17.

8. On August 30, 2021, Graphic protested Infosend’s selection as the best qualified under § 2.3 of the RFP which necessarily included an offeror providing all required forms of the RFP. Graphic also disputed the evaluation scoring that seemed inconsistent with § 2.3. which Graphic later learned was not the criterion by which GPA evaluated the offerors. GPA denied Graphic’s protest on October 7, 2021. See Decision, OPA-PA-21-012, ¶ 21.

9. GPA did not contact or verify Infosend’s references or factor into its evaluation the inherent delays and costs associated in providing the requested services from California for its Guam customer base.

10. On October 14, 2021, Graphic sought review of the procurement record via a Freedom Of Information Request (“FOIA”) for the period September 1, 2021 through October 14, 2021. See Decision, OPA-PA-21-012, ¶ 22.

11. The FOIA response revealed that Infosend bid failed to include the Amendment and failed to answer the questions the Amendment propounded.

12. Graphic timely appealed the Office of The Public Accountability's Decision ("decision") which affirmed GPA's denial of the protest in Appeal No. OPA-PA-21-012.

13. This civil action is a Complaint seeking judicial review of the Office of Public Accountability's Decision that affirms the selection of Infosend as the best qualified offeror, a copy of which is appended and marked as Exhibit "3".

## **II. JURISDICTION**

14. This Court has jurisdiction over this matter under 7 G.C.A. § 3105, 5 G.C.A. § 5707 and 5 G.C.A. § 5480.

## **III. PARTIES**

15. Graphic is a corporation operating in Guam, is licensed to do business in Guam, currently provides printing, professional printing, mailing and processing services to public utility customers on Guam and is an entity receiving an adverse decision from the Office of Public Accountability ("OPA").

16. This Action is timely pursuant to 5 G.C.A. § 5481(a).

17. The Territory of Guam is properly a Defendant in this action and has waived sovereign immunity pursuant to 5 G.C.A. § 5480(a). Defendant, GPA, is an autonomous agency of the Government of Guam, and issued a Request For Proposal GPA-RFP-21-002 ("RFP") on May 13, 2021 seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing. GPA is a proper party and has waived sovereign immunity pursuant to 5 G.C.A. § 5480.

18. The OPA is an instrumentality of the Government of Guam, has exercised jurisdiction over the procurement protests denied by GPA, including the procurement at issue here, and is a proper

party.

19. INFOSEND is an interested party in this procurement, and is a California company organized and existing under the laws of the State of California, and was improperly named the awardee of GPA-RFP-21-002.

#### IV. RELEVANT FACTS

##### A. GPA AMENDMENT/PROCUREMENT RECORD/ EVALUATION CRITERIA

20. GPA published a Request For Proposal GPA-RFP-21-002 ("RFP") on May 13, 2021 seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing.

21. Graphic, Infosend, Inc. and Moonlight BPO responded to the RFP.

22. GPA disqualified Moonlight BPO as an offeror for failing to provide an Affidavit of Disclosure of Major Shareholders, a required form of the RFP.

23. GPA selected Infosend as the best qualified offeror and Graphic protested Infosend's selection.

24. At the time, Graphic lodged its inter-agency protest with GPA, it was unaware that Infosend had failed to include the amendment in its response or to answer the questions the amendment propounded.

25. GPA's response to Graphic's FOIA request revealed that Infosend bid failed to include the Amendment and failed to answer the questions the Amendment propounded.

26. Limitations on what the Superior court may consider removes safeguards in maintaining the quality and integrity of the procurement system. Teleguam Holdings LLC. Territory of Guam et.al. 2018 Guam 5 ¶ 33 (once an issue is before the Public Auditor it is required to substantively engage

it).

27. In its denial of Graphic's protest, GPA's determination revealed a fundamental but undisclosed error in utilizing the incorrect criterion to evaluate the offerors' bids and revealed a disparate, material treatment of Moonlight BPO and of Infosend in disqualifying the former but not the latter for failing to submit a required form in response to the RFP and deeming Infosend bid responsive.

28. Unbeknownst to Graphic and not a matter of public record, GPA exempted Infosend from its obligation to provide the amendment, a required form, in its response to the RFP.

29. The OPA conducted an evidentiary-agency hearing on February 4, 2022. See Decision OPA-PA-21-012, p.1 L18-19.

30. During the evidentiary hearing, Graphic confirmed that GPA evaluated the offerors under § 5.0, RFP EVALUATION CRITERIA and not under § 2.3 of the RFP, STANDARDS FOR DETERMINATION OF MOST QUALIFIED OFFEROR. See Graphic's exhibit "1"; see also, Decision, OPA-PA-21-012, p. 6 L7-23.

31. During the course of the evidentiary hearing, none of GPA's witnesses disagreed that §2.3 of the RFP was the criterion by which the offerors were to be evaluated and none provided an explanation for GPA's election to utilize § 5.0 instead of § 2.3 to determine the most or best qualified offeror.

32. During the course of the evidentiary hearing, none of the witnesses disagreed that the RFP containing two (2) separate evaluation criteria rendered the RFP confusing to the offerors.

33. During the course of the evidentiary hearing the GPA witnesses agreed that Infosend's response did not include the Amendment and none was able to detect in Infosend's response answers to the questions the propounded the Amendment.

34. During the course of the evidentiary hearing, none of the GPA witnesses disagreed the Amendment was a required form pursuant to § 2.13 of the RFP.

35. The Public Auditor's legal conclusion that § 5.0 criterion is "...in line with the minimum factors in Guam Procurement... 2 GAR § 3114 (f) (2)." (Decision, OPA-PA-21-012, p. 6 L12-23) belies fact that the factors set forth in 2 GAR § 3114 (f) (2) are substantively more similar to the factors set forth in § 2.3 of the RFP.

36. The Public Auditor's legal conclusion that it was without subject matter jurisdiction to Consider the issue of Infosend's incomplete bid and its disqualification because Graphic had not raised the issue in its protest to GPA was error.

37. The Public Auditor denied Graphic's Appeal. See Decision, OPA-PA-21-012.

#### **FIRST CLAIM FOR RELIEF**

The Public Auditor's Finding That Infosend's Bid Complied With The RFP And That GPA's Acceptance Of Infosend's Bid As Responsive Are Arbitrary, Capricious, Clearly Erroneous, Or Contrary To Law.

38. Graphic realleges and incorporated by reference the allegations made in paragraph 1 through 37 above as if fully set forth herein.

39. The Public Auditor's finding that Infosend submitted a responsive bid under the RFP is arbitrary, capricious, clearly erroneous, or contrary to law.

40. A "Responsive bidder means a person who has submitted a bid with conforms in all material aspects to the Invitation for Bids." 5 G.C.A. § 5210(g).

41. Adherence to the plain language of the RFP is essential for bidders and the integrity of the procurement system. Baldrige v. Government Printing Office, 513 Fed. Appx. 965, 967 (Fed. Cir. 2013) ("If the plain language of the RFP unambiguously called for decluttered laminate film, that



language controls.”); Professional Bldg. Concepts, Inc. v. City of Cent. Falls Housing Authority, 783 F.Supp. 1558, 1563 (U.S. Dist. R.I. 1992). (“Unless ambiguous, it is the language of the RFP which controls the form that a bid guarantee must take.”)

42. § 2.12’s plain language requires the offerors’ response to provide all required forms identified in the RFP.

43. There is no factual dispute that Graphic submitted all required forms with its response, including the Amendment.

44. Dawn Fejeran, Guam Procurement, testified that each bidder was required to submit the Amendment in its response and that Infosend did not submit the Amendment with its response.

45. Infosend’s Kelly Law corroborated Ms. Fejeran’s testimony by conceding that Infosend, though aware of the Amendment, failed to include it in its response

46. There is no factual dispute that Infosend failed to include a required form, namely the Amendment in its response and consequently failed to answer the questions that the Amendment propounded.

47. Ms. Fejeran testified that GPA granted Infosend an exemption from submitting the Amendment which prevented disqualification.

48. Ms. Fejeran testified that there is no record, public or otherwise, of GPA granting the exemption to GPA that is susceptible to review.

49. There is no factual support, or support in the record, for GPA’s determination to disqualify Moonlight BPO for failing to include a required form in its response and to not disqualify Infosend for failing to include a required form in its response.

50. There is no factual support, or support in the record, for GPA not granting Moonlight BPO an exemption from disqualification for failing to include a required form as GPA granted Infosend.

51. The Procurement Record contains no support or reasoning for holding one offeror to a stricter standard and another to a less strict compliance standard and then rewarding the latter with an award as the best qualified.

52. There is there a factual basis or support in the record for the OPA affirming GPA's disparate treatment of offerors or for failing to hold GPA to the terms and conditions of its RFP.

53. The is no factual support, or support in the record, for the determination by GPA or by OPA that Infosend's response was responsive.

54. Cancellation of a bid is appropriated when an agency treats and evaluates offerors disparately.

55. The full and free competition that procurement law seeks to promote is nullified by GPA's invidious interpretation of the RFP that results in disparate treatment and evaluation of offerors and its inexplicable grant of an exemption to Infosend. Because of these facts, there can be no meaningful legal competition that is full, fair and free.

56. When the full and free competition that is required is not obtained, the purported award is void.

57. This Court should find, order and declare that the OPA's Decision affirming GPA's determination that Infosend was responsive and the best qualified offeror is arbitrary, capricious, clearly erroneous, or contrary to law.

## **SECOND CLAIM FOR RELIEF**

The Public Auditor's Affirmation of GPA's Finding that Infosend Was The Best Qualified Offeror In the Absence of a Procurement Record Documenting The Basis For Exempting Infosend's From Compliance With the RFP is Arbitrary, Capricious, Clearly Erroneous, or Contrary to Law.

58. Graphic realleges and incorporates the allegations made in paragraph 1 through 57 above as

if fully set forth herein.

59. To protect the integrity of the bidding process, a procurement record must be kept and maintained. 5 G.C.A. § 5252 (a). That record must include “the date, time, subject matter and names of participants at any meeting, including government employees that in any way related to a particular procurement” and “a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which in any way related to the procurement.” 5 G.C.A. § 5249 (a) & (b).

60. In the course of the evidentiary hearing, GPA’s procurement officer revealed that GPA had granted an exemption to Infosend from complying with the RFP but maintained no record of the events, proceedings, communications between GPA and Infosend respecting the grant of the heretofore-undisclosed exemption or the date of GPA’s grant.

61. A record of an exemption is material to this procurement because without it, (as in the instance of Moonlight BPO), GPA would have been compelled to disqualify Infosend as a bidder.

62. The absence of records material to an award thwarts judicial review. Teleguam Holdings LLC. Territory of Guam et.al. 2018 Guam 5 ¶ 39

63. It evident that the procurement record is incomplete, that GPA failed to maintain a complete procurement record as required by 5 G.C.A and that certification of the procurement record was improper.

64. Graphic raised these deficiencies and the incomplete nature of the procurement record when they were revealed yet the OPA affirmed of GPA’s denial of Graphic’s protest which was arbitrary, capricious, clearly erroneous, or contrary to law.

65. Because of these failings, the law mandates that the court cancel the award.

### **THIRD CLAIM FOR RELIEF**

#### The Public Auditor's Finding That GPA Applied The Correct Criterion To Evaluate The Offerors is Arbitrary, Capricious, Clearly Erroneous, or Contrary to Law.

66. Graphic realleges and incorporated the allegations made in paragraph 1 through 65 above as if fully set forth herein.

67. In the evidentiary hearing, it became evident that GPA utilized § 5.0, and not §2.3 of the RFP to evaluate the offerors' bids.

68. GPA provided no rational explanation for the inclusion of two (2) separate evaluation criteria in the RFP or an explanation for choosing one evaluation standard while ignoring the other standard.

69. There is no factual support, or support in the record, that GPA informed the offerors that the sole criterion to determine the most qualified offeror was § 5.0, and not § 2.3 of the RFP.

70. GPA conceded that an RFP containing two (2) separate evaluation standards was confusing.

71. The OPA erred in holding that GPA properly utilized § 5.0 of the RFP because it contains the factors identified in 2 GAR, § 3114(f)(2).

72. The factors identified in 2 GAR § 3114 (f) (2) are substantively more similar to those found in § 2.3.

73. In great part, § 5.0 addresses the cosmetic nature of an offeror's bid (in "overall presentation", "methodology that demonstrates an understanding of the requirements' and "references") in contrast to § 2.3 which addresses an offeror's "ability, capacity and skill ...to perform the work specified, "...perform[ance] promptly or within specified time", quality of performance with regards to awards previously made...".

74. This Court should find, order and declare that the OPA's Decision affirming GPA's

determination that Infosend was the best qualified offeror is arbitrary, capricious, clearly erroneous, or contrary to law.

#### **FOURTH CLAIM FOR RELIEF**

##### The Public Auditor's Affirmation of GPA's Evaluation Committee's Scoring of the Offerors' Bids is Arbitrary, Capricious, Clearly Erroneous, or Contrary to Law.

75. Graphic realleges and incorporates the allegations made in paragraph 1 through 74 above as if fully set forth herein.

76. GPA issued an RFP that contained two (2) separate evaluation criteria which created unnecessary confusion and ambiguity respecting the government's underlying requirements and to the offerors.

77. Graphic protested this failing upon confirmation at the evidentiary hearing before the OPA. See Decision OPA-PA-21-012, p. 6 L12-13.

78. GPA's Evaluation Committee's bid scoring, based on section 5.0 of the RFP, was an erroneous evaluation standard rendered GPA's determination invalid and OPA's Decision affirming GPA's determination arbitrary, capricious, clearly erroneous or contrary to law.

#### **PRAYER FOR RELIEF**

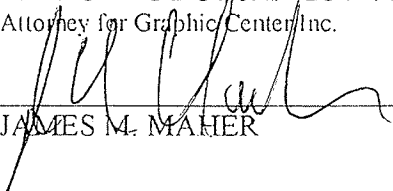
WHEREFORE, Graphic respectfully requests that this Court issue the following relief:

1. With regard to the First Claim for Relief, the Court find that Infosend was not a responsive bidder and that the OPA's Decision was arbitrary, capricious, clearly erroneous or contrary to law.
2. With regard to the Second Claim for Relief, the Court find that an incomplete procurement record thwarts proper judicial review and mandates the cancellation of the award.

3. With regard to the Third Claim for Relief, the Court find that GPA utilized the incorrect evaluation standard, that it failed to inform the offerors which evaluation standard applied to the RFP, that the inclusion of two evaluation standards in its RFP confused and misled the offerors and that OPA's Decision affirming GPA's practice and its denial of Graphic's protest was arbitrary, capricious, clearly erroneous or contrary to law.
4. With regard to the Fourth Claim for Relief, the Court find that the inclusion of two evaluation standard, was misleading and confusing to offerors and to the government's underlying requirements.

LAW OFFICE OF JAMES M. MAHER  
Attorney for Graphic Center/Inc.

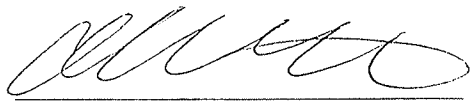
By:

  
JAMES M. MAHER

#### VERIFICATION

I, CHRISTOPHER BIOLCHINO, duly authorized representative for GRAPHIC CENTER, INC., declare that I am the petitioner in the foregoing VERIFIED COMPLAINT, that I have read said Complaint and know the contents thereof to be true and correct, except as to the matters which are therein stated upon information and belief; and as to those matters, I believe them to be true.

I declare under penalty that the foregoing is true and correct. Executed at Hagatna, Guam on April 5, 2022.

  
CHRISTOPHER BIOLCHINO,  
Duly authorized representative



# GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN  
P.O.BOX 2977 • HAGÂTNÂ, GUAM U.S.A. 96932-2977

To All Interested Parties:

I hereby acknowledge the following **GLOBAL NOTICE: COVID-19 PANDEMIC requirements:**

To ensure the safety and well-being of personnel and prospective bidders, please be advised of the following:

1. Six (6) Feet of Social Distancing shall be practiced.
2. Mandatory face mask required for each individual.
3. Temperature checks shall be conducted upon entrance of the Gloria B. Nelson Public Service Building.
4. One (1) Personnel per Prospective Bidder to submit and attend public opening.
5. One (1) Personnel per Prospective Offeror to submit an RFP proposal.

COMPANY NAME:

NAME OF INDIVIDUAL:

\_\_\_\_\_

Print / Sign

Date

BID NO.: \_\_\_\_\_

RFP NO.: RE-SOLICITATION GPA-RFP-21-002

Exhibit "1"

Ex A



JOEY T. DUENAS  
CCU Chairman

GUAM POWER AUTHORITY  
ATURIDAT ILEKTRESEDAT GUAHAN  
P.O. BOX 2977 \* AGANA, GUAM U.S.A. 96932-2977  
Telephone Nos.: (671) 648-3054/55 or Facsimile (671) 648-3165



JOHN M. BENAVENTE, P.E.  
General Manager

Accountability	Impartiality	Competence	Openness	Value
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REQUEST FOR PROPOSAL: RE-SOLICITATION GPA-RFP-21-002

DESCRIPTION: PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING TO UTILITY CUSTOMER BILLING

**SPECIAL REMINDER TO PROSPECTIVE INDIVIDUALS/FIRMS**

Firms/Individuals are reminded to read Proposal Instructions to ascertain that all of the following requirements checked below are submitted in the proposal envelope, one (1) bound paper original, five (5) bound paper copies, and one (1) electronic PDF format copy, at the date and time for proposal remittance.

- ☒ STATEMENT OF QUALIFICATION;
- ☒ AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- ☒ NO GRATUITIES OR KICKBACKS AFFIDAVIT;
- ☒ ETHICAL STANDARDS AFFIDAVIT;
- ☒ WAGE DETERMINATION AFFIDAVIT;
- ☒ RESTRICTIONS AGAINST SEX OFFENDERS AFFIDAVIT;
- ☒ NON-COLLUSION AFFIDAVIT;

\*Note: The above Affidavits must comply with the following requirements;

- a. The affidavit must be signed within 60 days of the date the bid is due;
- b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- c. First time affidavit must be an original – If copy, indicate Bid Number/Agency where original can be obtained.

☒ OTHERS: A Guam Business License is not required in order to provide a proposal for this engagement, but is a pre-condition for entering into a contract with the Authority. Offerors MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act ([www.wdol.gov](http://www.wdol.gov)).  
Additionally, upon award the successful firm/individual must provide to GPA the most recently issued Wage Determination by the US Dept. of Labor.

\*\*\*Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 5GCA Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98:

*If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.*

This reminder must be signed and returned in the proposal envelope together with the proposal. Failure to comply with the above requirements will mean a disqualification and rejection of the proposal.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, authorized representative of \_\_\_\_\_ acknowledge receipt of this special reminder to PROSPECTIVE Individual/Firm with the above referenced RFP.

\_\_\_\_\_  
Individual/Firm Representative's Signature



# REQUEST FOR PROPOSAL

NO. GPA-RFP-21-002

FOR  
RE-SOLICITATION OF  
PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES  
RELATING TO UTILITY CUSTOMER BILLING

A handwritten signature in black ink, appearing to read "John J.E. Kim", is written over a horizontal line.

JOHN J.E. KIM  
Chief Financial Officer

A handwritten signature in black ink, appearing to read "John M. Benavente", is written over a horizontal line.

JOHN M. BENAVENTE, P.E.  
General Manager

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## **1 INSTRUCTIONS TO OFFEROR**

### **1.1 DEFINITIONS**

- OFFEROR: The individual, partnership, corporation, or joint venture submitting a written or documented response to this subject RFP.
- OWNER: The Guam Power Authority (GPA) General Manager or designated representative.
- ADDENDA: Any amendment, modification or addenda issued by OWNER, prior to the opening of the RFP's, for the purpose of changing the intent of the plans and technical specifications, clarifying the meaning of the same, or changing any of the provisions of this RFP, shall be binding to the same extent as if written in the Specifications.

### **1.2 PROPOSALS**

The OFFEROR is required to read each and every page of the Request for Proposal and by the act of submitting a proposal shall be deemed to have accepted all conditions contained therein. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a proposal after opening.

Proposals shall be filled out in ink or typewritten and signed in black ink. Erasures or other changes in a proposal must be explained or noted over the signature of the OFFEROR. Proposals containing any conditions, omission, unexplained erasure or alterations or items not called for in the Proposal, or irregularities of any kind shall be rejected by the Guam Power Authority as being incomplete.

### **1.3 PROPRIETARY PORTIONS OF PROPOSALS**

The OFFEROR may designate any proprietary portions of the proposal which contain trade secrets or other proprietary data to remain confidential.

### **1.4 PREPARATION AND SUBMISSION OF PROPOSALS**

Envelopes containing proposals shall be sealed and marked on the face with the name and address of the OFFEROR, the Proposal Number and the time and date of submission. Telegraphic proposals will not be considered, nor modification by telegraph of proposals already submitted.

Only non-priced proposals are to be submitted by the proposal deadline. Priced proposals will be requested of the selected vendor or vendors at a later time.

Proposals shall be hand-carried and received at the place of opening on or before the opening date and time. Proposals received through mail will not be accepted if such mail is received at the address showing after the submission date and time. Proposals will not be opened publicly.

All submittals must strictly conform to the Request for Proposal and any addenda.

One (1) bound paper original, five (5) bound paper copies, and one (1) electronic PDF format copy of each proposal, consisting of technical and commercial sections, must be submitted, including all addenda, if any. Any and all sample documentation (reports of similar jobs, brochures, etc.) that will assist towards OFFEROR's evaluation may be furnished with each proposal.

No submittal shall be considered complete unless accompanied by all items specified in these submittal instructions.

**Request for Proposal No.: RE-SOLICITATION GPA-RFP-21-002 must be submitted before 3:00 P.M., June 03, 2021 in a sealed envelope indicating the RFP number and addressed as follows:**

**To:** Guam Power Authority  
GPWA Procurement Office  
Gloria B. Nelson Public Service Building  
688 Route 15  
1st. Floor, Room 101  
Fadian, GU 96913

**Attn:** Jamie Lynn C. Pangelinan  
Supply Management Administrator

Examination of RFP Documents: OFFEROR shall examine the RFP documents to inform himself of all conditions and requirements for the execution of the proposed work. Ignorance on the part of OFFEROR of any part of the Request for Proposal will in no way relieve him/her of the obligations and responsibilities assumed under the Contract.

Interpretation of the Approximate Quantities: OFFEROR's attention is called to the fact that any estimate of quantities of work to be done and materials to be furnished under the Contract as shown on the technical requirements section or elsewhere, is approximate only and not guaranteed. OWNER does not assume any responsibility that the final quantities shall remain in strict accordance with the estimated quantities, nor shall OFFEROR plead misunderstanding or deception because of such estimate of quantities or of the character, location of the work or other conditions pertaining thereto.

Familiarity with Laws: OFFEROR is assumed to be familiar with Federal and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of OFFEROR will in no way relieve him/her from responsibility. The preparation and submission of a proposal will be by and at the expense of the OFFEROR.

## **1.5 EXPLANATION TO OFFERORS**

No oral explanation in regard to the meaning of the specification will be made and no oral instructions will be given before the award of the proposal. Discrepancies, omissions, or doubts as to the meaning of the specifications must be communicated in writing to the named contact individual of the Guam Power Authority requesting for interpretation. OFFERORS should act promptly and allow sufficient time for a reply to reach them before the submission of their proposals. Interpretation, if required, shall be made in the form of an amendment to the specifications, which will be forwarded to all prospective OFFERORS, and its receipt by the OFFEROR should be acknowledged on the proposal form.

## **1.6 CLARIFICATION ON REQUEST FOR PROPOSAL**

Each OFFEROR must carefully examine the Request for Proposal and all addenda. If any OFFEROR (a) finds any discrepancies, omissions or ambiguities in the RFP documents, (b) is uncertain as to the intent or meaning of any provision of the request for Proposal, or (c) has any question regarding the Request for Proposal, the OFFEROR must promptly notify GPA in writing no later than (4) four working days prior to the closing date of this RFP thereof in writing at the address specified for submission of proposals. Replies to such notices may be made in the form of addenda, which will be issued simultaneously to all prospective OFFERORS. GPA further reserves the right to respond to any and all inquiries to this RFP, as any amendments issued may impact the project completion schedule.

## **1.7 ALTERNATE PROPOSALS**

GPA reserves the right to withhold its approval of any or all alternates proposed by OFFERORS and to deny any or all requests for such approvals.

## **1.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

An OFFEROR may modify or withdraw its proposal by written request, provided that the request is received by GPA at the address indicated and prior to the time specified for the submission of proposals. Any proposals or submittals received after the time and date set for receipt of proposals or submittals will be considered late. No late modification or withdrawal will be considered unless received before the date of opening. Following withdrawal of its proposal, an OFFEROR may submit a new proposal, provided the new proposal is received by GPA prior to the time specified for the submission of proposals. There shall be no modifications or withdrawals after the opening date.

GPA may modify any provision of the Request for Proposal at any time prior to the time specified for the submission of proposals. Such modifications may be made in the form of addenda, which will be issued simultaneously to all OFFERORS.

Any addenda issued will be mailed to all OFFERORS in duplicate. OFFEROR shall acknowledge receipt of same by his signature on copy, which is to be returned to OWNER. The other copy shall accompany the proposal or submittal. Acknowledgement may also be made in writing or by telex or telegram.

Negligence on the part of the OFFEROR in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened.

## **1.9 COMPLETE PROPOSALS**

OFFERORS are requested to submit proposals, which are complete and unambiguous without the need for additional explanation or information. GPA may make a final determination as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted, and proceed with proposal evaluation without requesting further information from any OFFEROR. GPA may, in its sole discretion, request from OFFERORS additional information clarifying or supplementing, but not basically changing any proposal as submitted.

All Proposals shall remain the property of GPA.

Time for Acceptance: All submittals shall be valid for 60 days from date of RFP opening.

Completion Date: OFFEROR shall realize that satisfactory completion of this work within the period shown on the Contract form is a critical requirement. Failure to do so may cause the imposition of liquidated damages as specified therein.

#### **1.10 POST-PROPOSAL MEETING**

After the receipt of proposals, GPA may request additional information over the telephone or in individual meetings with selected OFFERORS to clarify and discuss their proposals. Failure by an OFFEROR to attend such requested meeting(s) shall be cause for disqualification.

GPA reserves the right to request clarifications from only those OFFERORS whom it deems in its best interest.

All clarifications shall be documented by OFFERORS as addenda to the submittals.

#### **1.11 PROPOSAL INCONSISTENCIES**

Any provisions in the proposal which are inconsistent with the provisions of this Request for Proposal, unless expressly described as being exceptions or alternates, are deemed waived by the OFFERORS. In the event the proposal is awarded to OFFEROR, any claim of inconsistency between the proposal and these RFP documents will be resolved in favor of these RFP documents unless otherwise agreed to in writing by GPA.

#### **1.12 SUBCONTRACTOR**

If the OFFEROR plans to enter into contracts with subcontractors in order to complete this project, the identification and location of the possible subcontractors with a comprehensive description of their offering shall be submitted with the proposal. GPA reserves the right to disapprove any subcontractor, or a subcontractor's offering proposed by the OFFEROR. This right applies to the original submittal as well as submittals subsequent to the original proposal.

#### **1.13 SUBMITTAL FORMAT**

All responses to this subject RFP shall be written in the ENGLISH language.

The submittal information shall be in 8-1/2 inch by 11-inch report binders with the covers identifying the respective OFFEROR. Large sheets or drawings shall be bound in the binder so that they can be unfolded for easy review.

#### **1.14 SIGNATURE**

The proposals shall be signed by an official authorized to contractually bind the OFFEROR. The proposal shall also provide the following information:

Signature on Proposal: OFFEROR must sign his proposal correctly. If the proposal is made by an individual, his name and post office address must be shown. If made by a firm or partnership, the name and post office address of each member of the firm or partnership must be shown. If made by a corporation, the person signing the proposal shall show the name of the State or Territory under the laws of which the corporation was chartered, also the names and business address of its president, secretary and treasurer.

#### 1.15 INQUIRIES

Prospective OFFERORS should address inquiries, questions or clarifications in writing to:

John M. Benavente, P.E.  
General Manager  
Guam Power Authority  
Gloria B. Nelson Public Service Building  
688 Route 15  
Mangilao, Guam 96913

Attn: Jamie Lynn C. Pangelinan  
Supply Management Administrator  
GPA Procurement Division  
1st. Floor, Room 101  
Telephone No: (671) 648-3054/3055  
Facsimile: (671) 648-3165  
Email: [jpangelinan@gpagwa.com](mailto:jpangelinan@gpagwa.com)

**\*Note: Cut-Off Date for Receipt of Questions shall be Thursday, May 20, 2021 at 4:00 P.M.**  
Inquiries received after the deadline shall not be entertained.



## **2 GENERAL TERMS AND CONDITIONS**

### **2.1 AUTHORITY**

This Request for Proposals (RFP) solicitation is issued subject to all of the provisions of the Guam Procurement Act (Public Law 16-124) and the Guam Procurement Regulations (copies are available for inspection at the Guam Power Authority). The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

### **2.2 GENERAL INTENTION**

Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the OFFEROR to provide the Guam Power Authority with specified services.

### **2.3 STANDARDS FOR DETERMINATION OF MOST QUALIFIED OFFEROR**

In determining the most qualified OFFEROR, the Agency/Department shall be guided by the following:

- A. The ability, capacity and skill of the OFFEROR to perform the work specified.
- B. Whether the OFFEROR can perform promptly or within the specified time.
- C. The quality of performance of the OFFEROR with regard to awards previously made to him.
- D. The previous and existing compliance by the OFFEROR with laws and regulations relative to procurement.

### **2.4 AWARD OR REJECTION OF PROPOSALS**

The right is reserved as the interest of the Guam Power Authority may require waiving any minor informalities or irregularities in proposals received. The Guam Power Authority reserves the right and shall have the prerogative to award, amend, or reject proposals in whole or in part. It is the policy of the Guam Power Authority to award proposals to OFFERORS duly authorized and licensed to conduct business in Guam.

GPA reserves the right to award a Contract for the entire RFP scope or for subsets of the RFP scope to one, none, or any OFFERORS.

Proposals will be opened privately, and GPA reserves the right to keep any or all proposals confidential.

- A. Cancellation of Solicitation, Delays: GPA reserves the right to cancel or to withdraw this RFP, to delay determination on this RFP, or to reject all submittals or any individual submittal in whole or in part at any time prior to the final award. The reasons for the cancellation, delay or rejection shall be made a part of the project file and shall be available for public inspection.

After opening, but prior to award, all proposals may be rejected in whole or in part when the Procurement Authority of GPA determines in writing that such action is in the Territory's best interest for reasons including but not limited to:

- 1) The supplies and services being procured are no longer required;
- 2) Ambiguous or otherwise inadequate Specifications were part of the solicitation;
- 3) The solicitation did not provide consideration of all factors of significance to the Territory;
- 4) Price(s) exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- 5) Inability of the selected OFFEROR and GPA to successfully negotiate contract terms for the scope of services requested.

When a solicitation is cancelled or rejected prior to final award, notice of cancellation or rejection shall be sent to all OFFERORS. The reasons for cancellation or rejection shall be made a part of the project file and shall be available for public inspection.

- B. Rejection of Individual Proposal or Submittal: Any individual proposal or submittal may be rejected in whole or in part when in the best interest of the Authority. Reasons for rejecting a proposal or submittal include but are not limited to:

- 1) OFFEROR is not responsive;
- 2) The proposal or submittal is non-responsive as it does not conform in all respects to the RFP;
- 3) The construction, supply or service offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or technical requirements set forth in the RFP;
- 4) The proposal or submittal does not meet the requirements or criteria set forth in the RFP. Upon request, unsuccessful OFFERORS shall be advised of the reasons for rejection.

Any or all proposals or submittals will be rejected if there is reason to believe that collusion exists among OFFERORS and no participants in such collusion will be considered in future projects for the same work.

## 2.5 EXECUTION OF THE ORDER

The OFFEROR to whom the Order is awarded (the "successful OFFEROR") shall execute and deliver to GPA the Contract prior to performing any services on GPA premises. A written notice will be issued to the most successful OFFEROR indicating commencement of the project.

Award of Contract: The award of the Contract, if awarded, will be to the most responsive OFFEROR whose qualifications indicate that award thereto will be in the best interest of OWNER, and whose proposal shall comply with the requirements of the Contract Documents. In no case will the award be made until all necessary investigations have been made into the responsibility of the OFFEROR, and the OWNER is satisfied that the OFFEROR is qualified to do the work and has the necessary equipment to carry out the provisions of the Contract to the satisfaction of OWNER within the time specified. OWNER may award separate contracts for each project scope or for any combination of project scope.

Execution of Contract: The individual, firm or corporation to which this Contract has been awarded shall sign the necessary agreement entering into Contract with OWNER, and return it to OWNER within ten (10) days after date of award.

Failure to Execute Contract: Failure on the part of OFFEROR to execute the Contract as required will be just cause for the annulment of the award. The award may then be made to the next most qualified OFFEROR or the work re-advertised, as OWNER may elect.

**2.6 MODIFICATION / ALTERATION**

After the receipt and opening of proposals, and at its option, the Guam Power Authority may conduct discussions with the OFFEROR who has submitted a proposal reasonably susceptible of being selected for award with the purpose of clarification to assure full understanding and responsiveness to the Proposal requirements. OFFERORS shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision to proposals and such revisions shall be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing OFFERORS.

**2.7 CONTACT FOR CONTRACT ADMINISTRATION**

If your firm receives a contract as a result of this Proposal, designate a person whom we may contact for prompt administration, showing:

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

**2.8 DETERMINATION OF RESPONSIBILITY OF OFFEROR**

The Guam Power Authority reserves the right to secure from OFFERORS information necessary to determine whether or not they are responsible and to determine their responsibility in accordance with Section 2.3 of the General Terms and Conditions.

**2.9 LIMITATIONS**

This RFP does not commit the Guam Power Authority to award a contract, to pay any costs incurred in the preparation of a proposal by the OFFEROR under this request, or to procure a contract for services. The Guam Power Authority reserves the right to reject any and all proposals received under this request, to negotiate with all qualified sources, or to cancel the whole or any part of this RFP at any time.

**2.10 ACCEPTANCE OF PROPOSAL CONTENTS**

The contents of the Proposal of the successful firm will become contractual obligations if a contract ensues. Failure of the successful firm to accept these obligations will result in a disqualification of the Proposal.

**2.11 CONTROL**

The successful OFFEROR will carry out this assignment under the direction and control of the Guam Power Authority and/or his/her designee(s).

## 2.12 REQUIRED FORMS

All OFFERORS are required to submit current affidavits, as required below. Failure to do so will mean disqualification and rejection of the proposal.

- A. Major Shareholders Disclosure Affidavit
- B. Non-Collusion Affidavit
- C. No Gratuities or Kickbacks Affidavit
- D. Ethical Standards Affidavit
- E. Declaration Re-Compliance with U.S. DOL Wage Determination
- F. Restriction Against Convicted Sex Offenders
- G. Exhibit A

## 2.13 CONTRACT TERM

GPA and the CONSULTANT agree this CONTRACT will be for a one year period (12 months) from the date of award of the contract with an option to extend the contract for four additional one-year periods, subject to the availability of funds, and may, by mutual written agreement, be renewed at the same terms and conditions for additional periods subject to availability of funding.

## 2.14 JUSTIFICATION OF DELAY

The OFFEROR who is awarded the proposal guarantees that the services will be completed within the agreed upon completion date. If, however, the OFFEROR cannot comply with the completion requirement, it is the OFFEROR's responsibility to advise the Guam Power Authority in writing explaining the cause and reasons for the delay.

Section 6-101.09.1 of the Guam Procurement Regulations, "Liquidated Damages", will be in effect if the OFFEROR fails to meet the completion requirement.

## 2.15 INVOICING AND PAYMENT TERMS & CONDITIONS

All invoices shall include supporting documents (i.e. timesheets, shipping invoices, consumable listings, etc.). All supporting documents must be reviewed and approved by the GPA Project Manager prior to invoice submittals. All invoices will be paid net 30 days from the date the invoice is received at the GPA Accounting Department. Payment shall be made using a method mutually agreed upon by the Guam Power Authority and the successful OFFEROR.

## 2.16 TAXES

OFFEROR shall be liable for Guam Gross Receipt Taxes and all other applicable taxes and duties. The Guam Power Authority shall have no tax liability under this order. Specific information on taxes may be obtained from the Director of Revenue and Taxation.

GPA is a government agency exempted from all government taxes as stipulated in the Guam Code Annotated.

**2.17 LICENSING**

OFFERORS are reminded that the Guam Power Authority will not consider for award any offer submitted by an OFFEROR who has not complied with the Guam Licensing Law by the time of contract signing. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

**2.18 COVENANT AGAINST CONTINGENT FEES**

The OFFEROR warrants that he has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Guam Power Authority the right to terminate the Contractor, or in its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contracts or sales secured or made through, bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

**2.19 ASSIGNMENTS**

Contractor may not assign this CONTRACT or any sum becoming due under the provisions of this CONTRACT without the prior written consent of the Guam Power Authority.

**2.20 EQUAL EMPLOYMENT OPPORTUNITY**

Section 3.01 of the Executive Order 10935 dated March 07, 1965 requires the OFFEROR not to discriminate against an employee or applicant for employment because of race, creed, color or national origin. The OFFEROR will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to race, creed, color or national origin.

**2.21 AMERICAN DISABILITIES ACT**

If requested, the OFFEROR must meet all ADA regulations and requirements.

**2.22 PROHIBITION AGAINST GRATUITIES, KICKBACKS AND FAVORS TO THE TERRITORY**

All OFFERORS are required to submit a current No Gratuities of Kickbacks Affidavit. Failure to do so will mean disqualification and rejection of the proposal.

Pursuant to GCA 5 section 5630 (c), this clause is conspicuously set forth to alert all parties in this procurement that Guam Public Law Title 5 §5630. Gratuities and Kickbacks, prohibits against gratuities, kickbacks, and favors to the Territory.

## 2.23 RESTRICTION AGAINST CONVICTED SEX OFFENDERS

All OFFERORS are required to submit a current Restriction against Sex Offenders Affidavit. Failure to do so will mean disqualification and rejection of the proposal.

GCA 5 §5253(b) restricts the OFFEROR against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

## 2.24 MAJOR SHAREHOLDERS DISCLOSURE AND NON-COLLUSION

All OFFERORS are required to submit a current Major Shareholders Disclosure Affidavit as required below. Failure to do so will mean disqualification and rejection of the proposal.

5 GCA §5233 (Title 5, Section 5233) states:

"Section 5233 Disclosure of Major Shareholders. As a condition of submitting a bid or offer, any partnership, sole proprietorship or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid, or, that it is a not for profit organization that qualifies for tax exemption under the Internal Revenue Code of the United States or the Business Privilege Tax law of Guam, Title 12, Guam Code Annotated, Section 26203©. With the exception of not for profit organizations, the affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or offer and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying."

1. If the affidavit is a copy, indicate the RFP number and where it is filed.
2. Affidavits must be signed within 60 days of the date the proposals are due.

**2.25 NON-COLLUSION**

All OFFERORS are required to submit a current Non-Collusion Affidavit. Failure to do so will mean disqualification and rejection of the proposal.

**2.26 ETHICAL STANDARDS**

All OFFERORS are required to submit a current Ethical Standards Affidavit. Failure to do so will mean disqualification and rejection of the proposal.

**2.27 COMPLIANCE WITH U.S. DOL WAGE DETERMINATION**

All OFFERORS are required to submit a Declaration Re-Compliance with U.S. DOL Wage Determination. Failure to do so will mean disqualification and rejection of the proposal.

### 3 FORM OF CONTRACT

#### CONTRACT FOR TECHNICAL AND PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2021, by CONSULTANT NAME, hereinafter called the CONSULTANT, and the Guam Power Authority, hereinafter called GPA.

GPA engages the CONSULTANT to perform professional services for a project known and described as "**Professional Printing, Mailing and Processing Services**", GPA-RFP-\_\_\_\_\_, hereinafter called the "Project".

#### RECITALS

WHEREAS, the Guam Power Authority (GPA), is a public corporation of the Government of Guam authorized to conduct its own procurement; and

WHEREAS, the GPA strategic plan contains initiatives to create a culture based on customer services excellence at the Authority; and

WHEREAS, GPA seeks to enter into a contract for **Professional Printing, Mailing and Processing Services** with a Consultant wherein such services can be provided to the Authority for the benefit of its customers; and

WHEREAS, the services to be rendered are of a special and temporary nature and are determined to be in the best public interest to be performed under contract by technical personnel other than employees in the services of GPA; and

NOW, THEREFORE, the Guam Power Authority and the Consultant for the considerations set forth, agree as follows:

#### SECTION I - SERVICES OF THE CONSULTANT

The CONSULTANT shall perform the following professional services in accordance with the degree of care and skill that a registered professional in Guam would exercise under similar conditions:

- A. The CONSULTANT shall provide services as described in the detailed scope of work provided in the Scope of work in GPA-RFP-\_\_\_\_\_.
- B. The CONSULTANT has assigned \_\_\_\_\_ as the Project Manager for this Contract. Prior written approval is required in the event the CONSULTANT needs to change the Project Manager. The CONSULTANT shall submit the qualifications of the proposed substituted personnel to GPA for approval.
- C. The CONSULTANT shall submit all final documents in both hard copy and electronic format. All documents shall be Microsoft Office compatible or in an alternate format approved by GPA. The software version used shall be compatible to current GPA standards.

#### SECTION II - PERIOD OF SERVICE

GPA and the CONSULTANT agree this CONTRACT will be effective commencing \_\_\_\_\_, 2020 for a one year period (12 months) from the date of award of the contract with an option to extend the contract for four additional one-year periods, subject to the availability of funds, and may, by mutual written agreement, be renewed at the same terms and conditions for additional periods subject to availability of funding.

#### SECTION III - CONSULTANT'S COMPENSATION

- A. The total compensation to Consultant for services in this CONTRACT is the lump sum of: \_\_\_\_\_, plus approved adjustments.



B. GPA shall pay the CONSULTANT using a method mutually agreed upon by GPA and the successful Offeror.

#### **SECTION IV - CONSULTANT'S STATUS**

Consultant agrees that there shall be no employee benefits occurring from this Agreement, such as:

- A. Insurance coverage provided by GPA;
- B. Participation in the Government of Guam retirement system;
- C. Accumulation of vacation or sick leave;
- D. There shall be no withholding of taxes by GPA;
- E. That it is expressly understood and agreed that, in the performance of services under this Agreement, CONSULTANT and its employees shall at all times act as independent contractors with respect to GPA, and not as an employee or agent of GPA. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship and shall remain that of independent parties to a contractual relationship set forth in this Agreement.

#### **SECTION V - GUAM POWER AUTHORITY'S RESPONSIBILITIES**

- A. GPA shall designate a Project Manager during the term of this CONTRACT. The Project Manager has the authority to administer this CONTRACT and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by GPA on any aspect of the work shall be directed to the Project Manager.
- B. GPA shall review submittals by the CONSULTANT and provide prompt responses to questions and rendering of decisions pertaining thereto, to minimize delays in the progress of the CONSULTANT'S work. GPA will keep the CONSULTANT advised concerning the progress of GPA's review of the work. The CONSULTANT agrees that GPA's inspection, review, acceptance or approval of CONSULTANT'S work shall not relieve CONSULTANT'S responsibility for errors or omissions of the CONSULTANT or its sub-consultant(s).

#### **SECTION VI - INVOICING AND PAYMENT TERMS & CONDITIONS**

All Invoices shall include supporting documents (i.e. timesheets, shipping invoices, consumable listings). All supporting documents must be reviewed and approved by GPA Project Manager prior to invoice submittal for charges. All invoices will be paid NET 30 Days from date invoice is received at the GPA Accounting Department. Payment shall be made using a method mutually agreed upon by the Guam Power Authority and the CONSULTANT.

#### **SECTION VII - TERMINATION**

GPA, at its sole discretion, may terminate this CONTRACT for convenience or abandon any portion of the Project for which services have not been performed by the CONSULTANT, upon thirty (30) days written notice delivered to CONSULTANT personally, via email, or by certified mail at the address provided.

Immediately after receiving such notice, the CONSULTANT shall discontinue advancing the services under this CONTRACT and proceed to close said operations under this CONTRACT. The CONSULTANT shall appraise the services it has completed and submit an appraisal to GPA for evaluation. GPA shall have the right to inspect the CONSULTANT'S work to appraise the services completed.

In the event of such termination or abandonment, the CONSULTANT shall be paid for services performed prior to receipt of said notice of termination including reimbursable expenses then incurred.

GPA shall make final payment within thirty (30) days after the CONSULTANT has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this CONTRACT is terminated, GPA shall have the option of completing the work, or entering into a CONTRACT with another party for the completion of the work according to the provisions and agreements herein.

### **SECTION VIII - CHANGES**

GPA may at any time, by written order, make any changes or deletions in the services to be performed hereunder. If such changes or deletions cause an increase or decrease in the cost of doing work under this Agreement, or in the time required for this performance, an equitable adjustment shall be made as agreed to by the parties and the Agreement shall be modified in writing accordingly.

### **SECTION IX - ASSIGNMENT OF AGREEMENT**

Consultant may not assign this Agreement, or any sum becoming due to under the provisions of this Agreement, without the prior written consent of GPA.

### **SECTION X - FORCE MAJEURE**

Neither party shall be liable for any delay in meeting or failure to meet its obligations under this Agreement due to a force majeure.

### **SECTION XI - TAXES**

OFFEROR shall be liable for Guam Gross Receipt Taxes and all other applicable taxes and duties. Guam Power Authority shall have no tax liability under this contract. Specific information on taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

GPA is a government agency exempted from ALL government taxes as stipulated in the Guam Code Annotated.

### **SECTION XII - NOTICES**

Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally (not to include facsimile transmission) or shall be deemed to be delivered when received postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address as specified herein:

TO:	Name and Address
COPY:	If applicable, Name and address
FAX:	Fax number

TO:	Guam Power Authority P.O. Box 2977 Hagatna, Guam 96932-2977
ATTN:	General Manager
FAX:	(671) 648-3165

### **SECTION XIII - GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam.

### **SECTION XIV - SUPPLEMENTAL CONTRACT PROVISIONS**

The supplemental contract provisions to this CONTRACT are attached hereto and incorporated herein by reference as if fully set forth.

**SECTION XV – INDEMNIFICATION**

The CONSULTANT shall indemnify and hold GPA harmless from any claim, liability or product liability, loss, damage, demand, cause of action or suit, expense or reasonable fee of legal counsel arising out of or in connection with the goods or services the CONSULTANT provides.

**SECTION XVI – DISPUTES**

All controversies between GPA and the CONSULTANT which arise under, or are by virtue of this CONTRACT and which are not resolved by mutual agreement shall be resolved under Guam Procurement Law and the Government Claims Act, and pursuant to the laws of Guam.

**SECTION XVII – RELEASE OF INFORMATION**

The CONSULTANT shall not release any information, including the contract price; concerning this project or any part thereof in any form, including advertising, news releases, or professional articles, without written permission from GPA.

**SECTION XVIII – INSURANCE**

The CONSULTANT shall not commence work under this CONTRACT until he has obtained reasonable insurance for Auto Liability and Worker's Compensation and Employer's Liability up to the statutory limits. The CONSULTANT shall maintain all insurance required during the course of the work.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT this \_\_\_\_ day \_\_\_\_\_, 2021. The CONSULTANT warrants that the person who is signing this CONTRACT on behalf of the CONSULTANT is authorized to do so and to execute all other documents necessary to carry out the terms of this CONTRACT.

\_\_\_\_\_  
Offeror  
Title  
Company Name  
Federal I.D. No. /Social Security No.

\_\_\_\_\_  
JOHN M. BENAVENTE, P.E.  
GENERAL MANAGER  
GUAM POWER AUTHORITY

## 4 SOLICITATION AND TECHNICAL REQUIREMENTS

### Guam Power Authority Professional Printing, Mailing and Processing Services

#### General:

Established in 1968, Guam Power Authority (GPA) is a public corporation and an enterprise fund of the Government of Guam. GPA's governing board is the Consolidated Commission on Utilities (CCU) consisting of five elected commissioners.

GPA provides electric services to the island of Guam with 48,000 customer connections.

Our Billing section is responsible for preparing approximately 48,000 bills per month for print and mailing. The meter reading and billing processes are divided into 30 cycles with approximately 1,800 bills per cycle. A bill print file is processed and printed based on a set schedule of the cycle. Please note that multiple cycle can be processed in a day.

In addition, the Consolidated Commission on Utilities oversees Guam Water Authority (GWA). GWA provides water and waste treatment to the island of Guam.

GWA has 48,000 customers. If the business relationship is successful, GPA has the right to extend the RFP to Guam Water Works.

#### Current Customer Information System:

GPA recently converted our billing system to Oracle's Customer Care and Billing (CC&B) V2.6.1. Oracle Customer Self Service with Oracle replaced our current web based customer self-service system. This allows customers to easily view the bills and make payments online.

#### Purpose:

Guam Power Authority is seeking proposals from qualified vendors who can provide dynamic bill design, processing, print, finishing, mail, insertion, and electronic archiving of customer bills from Oracle's Customer Care & Billing (CC&B) solution. Guidelines with industry standards and best practice need to be considered when working with GPA and the bill reformat.

#### Scope of Work:

The following is an overview of the major requirements/specifications in which Guam Power Authority (GPA) is interested and provides explanatory information regarding items within the SOW.

**A. Communication** - This area covers the methods of data transfer from GPA to the vendor. You should indicate all methods of data transfer supported and the recommended method for transferring data. If the data must be delivered in a manual or non-electronic manner, please describe the method, delivery, turnaround time frame, additional costs, etc.

**B. Security** - This item addresses the security methods employed by the vendor to assure that transfer of GPA customer data and data processing is secure. This should also cover the finished products and its electronic and physical distribution. All encryption software, procedures, secured lines, etc. should be listed.

**C. Bill Format Software** - Guam Power Authority is looking to provide a flexible-billing format to support multiple metered and non-metered services. It is the intent of GPA to have the vendor format the billing statement from the provided layout, utilizing proven software.

**C. Electronic Archive** - Guam Power Authority is interested in obtaining an electronic archive of the bill and other documents sent to its customers to facilitate better Customer Service. This archive will need to be available directly after the bill extract is processed and represent a true image of the bill or other document to its Customer Service Representatives. The following will be required for the electronic archived data:

1. Electronic bill should be available via GPA Customer Website Integration or Mobile APP and indexed by customer number and billing date/month/year via a secure webpage link.
2. Electronic bill archive data should be kept for no more than 2 years from data of bill print to electronic conversion.
3. Bill archive data should also be available to GPA via an external secured access portal indexed by customer number and billing date/month/year.
4. All electronic data should be stored in a secure hosted environment in the United States or related territories. Access to such data is to be limited to GPA and vendor.

**E. Internet Email Delivery or Notification of Bill** - Guam Power Authority is interested in the ability to notify the customer that a bill is available via email. The internet accessible bill must be generated in a format that represents the true image of the bill, as well as not require special software licensing on the client. This true image must represent charts and graphs, logos and graphics, fonts, etc.

**F. Duplicate Bill** - This area addresses the ease and method of duplicate bill delivery at GPA's or the customer's request.

Return/Undeliverable Bill

Describe how return or undeliverable bills are addressed and notification to GPA of such.

**G. Special Handling/Pull Bill** - This section deals with the ease with which the vendor can handle special requests, particularly whether the vendor can pull a bill electronically or whether the vendor needs to rely on manual methods.

**H. Printer** - This area deals with the flexibility and features of your printers. As GPA starts to offer more services, it may be necessary to utilize different paper sizes and paper stocks.

**I. Finishers/Insertion Equipment** - This section addresses the features available on your finishing/insertion equipment.

**J. Mail** - GPA wants the best value as well as present a host of delivery options to its customers. Please also include if local printing and mailing will be available.

**K. Paper/Envelope** - GPA would like to understand your processes, procedures and pricing regarding paper inventory and envelopes. Include your inventory plan for GPA stock.

**L. Processing Window** - GPA needs to understand the deadlines and turnaround times between delivery of the bill print file, printing, and mailing to our customers.

Delivery Receipt Timeframe

GPA would like to know the timeframe of mailing of bills to customers from delivery to actual receipt.

**M. Disaster Recovery Plan** - Answering questions within this section will allow GPA to discover your processes and procedures in regards to Disaster Recovery and backup processes.

**N. Reporting** - Describe your balancing and quality assurance processes. How do you determine that every bill transmitted for processing is worked and data printed is accurate?  
Service Level Response Time

Describe the process and timeframe of responding to issues and resolutions.

**O. Archival and Retrieval Processing**

**P. Printing and Processing of Disconnection Notices**

**Q. Other Services** - Describe any other services you may offer which may benefit GPA.

**ADDITIONAL REQUESTS:**

- Each Proponent must complete Exhibit A.
- Copies of bill samples in Exhibit B.

**5.0: RFP EVALUATION CRITERIA**

A committee will convene after the deadline for receipt of submittals to evaluate the respondents' qualifications based on but not limited to the following criteria:

Criteria	Points	Weight
Experience of the firm in this type of service and utility scale.	10	25%
Quality of approach and methodology that demonstrates an understanding of the requirements.	10	25%
Quality, extent and relevance of Proponent's staff / experience in conducting service(s) and utility scale.	10	25%
Overall presentation (Quality of submittal, professionalism, etc.)	10	15%
References	10	10%

A team composing of five (5) members will be chosen by the Authority to evaluate the proposals based on the above criteria. Each team member will rank each OFFEROR based on points received from the total weighted criteria. A final ranking will be determined by consolidating the team members' ranking.

APPENDIX A      MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT
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## MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM                    )  
   )ss.  
 HAGATNA, GUAM                        )

I, the undersigned, \_\_\_\_\_, being first  
   (partner or officer of the company of, etc.)  
 duly sworn, depose and say:

1. That the persons who have held more than ten percent (10%) of the company's shares during the past twelve months are as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total Number of Shares:		_____

2. Persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid/rfp for which this Affidavit is submitted are as follows:

<u>Name</u>	<u>Address</u>	<u>Amount of Commission Gratuity or Other Compensation</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature of individual if bidder/offeror is a sole proprietorship;  
 Partner, if the bidder is a partnership; Officer, if the bidder is a  
 corporation.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_  
 In and for the Territory of Guam

My Commission expires: \_\_\_\_\_

<b>APPENDIX B    NON-COLLUSION AFFIDAVIT</b>
--

I, \_\_\_\_\_, first being duly sworn, depose and say:  
(Name of Declarant)

- (Declarant)

Notary Public \_\_\_\_\_  
In and for the Territory of Guam

My commission expires: \_\_\_\_\_

<b>APPENDIX C      NO GRATUITIES OR KICKBACKS AFFIDAVIT</b>
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## NO GRATUITIES OR KICKBACKS AFFIDAVIT

**AFFIDAVIT**

(Offeror)

TERRITORY OF GUAM            )  
   )ss:  
 HAGATNA, GUAM                )

\_\_\_\_\_, being first duly sworn, deposes and says:

As the duly authorized representative of the Offeror, that neither I nor of the Offeror's officers, representatives, agents, subcontractors, or employees has or have offered, given or agreed to give any government of Guam employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with Offeror's proposal.

\_\_\_\_\_  
 Signature of Individual if Offeror is a Sole Proprietorship;  
 Partner, if the Offeror is a Partnership;  
 Officer, if the Offeror is a Corporation

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_  
 In and for the Territory of Guam

My commission expires: \_\_\_\_\_

<b>APPENDIX D     ETHICAL STANDARDS AFFIDAVIT</b>
---

## ETHICAL STANDARDS AFFIDAVIT

**AFFIDAVIT**

(Offeror)

TERRITORY OF GUAM            )  
   )ss:  
 HAGATNA, GUAM                )

\_\_\_\_\_, being first duly sworn, deposes and says:

That I am (the Sole Proprietor, a Partner or Officer of the Offeror)

That Offeror making the foregoing Proposal, that neither he or nor of the Offeror's officers, representatives, agents, subcontractors, or employees of the Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11, and promises that neither he nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standard set for in 5 GCA Chapter 5 Article 11.

\_\_\_\_\_  
 Signature of Individual if Offeror is a Sole Proprietorship;  
 Partner, if the Offeror is a Partnership;  
 Officer, if the Offeror is a Corporation

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_  
 In and for the Territory of Guam

My commission expires: \_\_\_\_\_

<b>APPENDIX E</b>	<b>DECLARATION RE-COMPLIANCE WITH U.S. DOL WAGE DETERMINATION</b>
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## DECLARATION RE-COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: \_\_\_\_\_

Name of Offeror Company: \_\_\_\_\_ hereby certifies under penalty of perjury:

- (1) That I am \_\_\_\_\_ (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ('contractor') for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;
- (4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor.

\_\_\_\_\_  
 Signature of Individual if Proposer is a Sole Proprietorship;  
 Partner, if the Proposer is a Partnership;  
 Officer, if the Proposer is a Corporation

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
 Notary Public  
 In and for the Territory of Guam  
 My Commission Expires:

APPENDIX F      RESTRICTION AGAINST CONVICTED SEX OFFENDERS
---



# GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUÅHAN  
P.O.BOX 2977 • HAGÂTÑA, GUAM U.S.A. 96932-2977

## SPECIAL PROVISIONS

### **Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property**

GCA 5 §5253(b) restricts the OFFEROR against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

\_\_\_\_\_  
Signature of Bidder      Date  
Proposer, if an individual;  
Partner, if a partnership;  
Officer, if a corporation.

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_  
In and for the Territory of Guam

My commission expires: \_\_\_\_\_

EXHIBIT A - 2020 BILLING CYCLE

MONTH	YEAR
JANUARY	2020

DATE	CYCLES
January 1, 2020	<i>New Year's Day</i>
January 2, 2020	PM23,PM24,PM25,PM26,PM27,PM28
January 3, 2020	
January 4, 2020	
January 5, 2020	
January 6, 2020	PM29,PM30
January 7, 2020	
January 8, 2020	PM01, PM02, PM03
January 9, 2020	PM04,PM05
January 10, 2020	PM06
January 11, 2020	
January 12, 2020	
January 13, 2020	
January 14, 2020	
January 15, 2020	PM07,PM08,PM09
January 16, 2020	PM10, PM11
January 17, 2020	
January 18, 2020	
January 19, 2020	
January 20, 2020	<i>Martin Luther King Jr Day</i>
January 21, 2020	PM12
January 22, 2020	PM13, PM14, PM15
January 23, 2020	PM16
January 24, 2020	PM17, PM18
January 25, 2020	
January 26, 2020	
January 27, 2020	PM19
January 28, 2020	PM20
January 29, 2020	PM21
January 30, 2020	
January 31, 2020	

MONTH	YEAR
FEBRUARY	2020

DATE CYCLES

February 1, 2020	
February 2, 2020	
February 3, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
February 4, 2020	
February 5, 2020	
February 6, 2020	
February 7, 2020	PM01,PM02,PM03,PM04,PM05
February 8, 2020	
February 9, 2020	
February 10, 2020	
February 11, 2020	PM06
February 12, 2020	PM07,PM08
February 13, 2020	PM09
February 14, 2020	PM10
February 15, 2020	
February 16, 2020	
February 17, 2020	PM11
February 18, 2020	PM12
February 19, 2020	PM13,PM14
February 20, 2020	PM15
February 21, 2020	PM16
February 22, 2020	
February 23, 2020	
February 24, 2020	PM17,PM18
February 25, 2020	PM19,PM20,PM21
February 26, 2020	
February 27, 2020	
February 28, 2020	
February 29, 2020	

MONTH	YEAR
MARCH	2020

DATE CYCLES

March 1, 2020

March 2, 2020

*Guam Discovery and Chamorro Heritage Day*

March 3, 2020

March 4, 2020 PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30

March 5, 2020

March 6, 2020 PM01,PM02,PM03

March 7, 2020

March 8, 2020

March 9, 2020 PM04,PM05

March 10, 2020 PM06

March 11, 2020

March 12, 2020 PM07,PM08

March 13, 2020 PM09

March 14, 2020

March 15, 2020

March 16, 2020 PM10

March 17, 2020 PM11

March 18, 2020 PM12

March 19, 2020 PM13,PM14

March 20, 2020 PM15

March 21, 2020

March 22, 2020

March 23, 2020 PM16

March 24, 2020 PM17,PM18

March 25, 2020 PM19,PM20,PM21

March 26, 2020

March 27, 2020

March 28, 2020

March 29, 2020

March 30, 2020

March 31, 2020

MONTH	YEAR
APRIL	2020

DATE	CYCLES
April 1, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
April 2, 2020	
April 3, 2020	
April 4, 2020	
April 5, 2020	
April 6, 2020	
April 7, 2020	PM01,PM02,PM03
April 8, 2020	PM04,PM05,PM06
April 9, 2020	
April 10, 2020	
April 11, 2020	
April 12, 2020	
April 13, 2020	
April 14, 2020	PM07,PM08,PM09,PM10
April 15, 2020	PM11
April 16, 2020	
April 17, 2020	
April 18, 2020	
April 19, 2020	
April 20, 2020	PM12
April 21, 2020	PM13,PM14,PM15,PM16
April 22, 2020	PM17,PM18
April 23, 2020	
April 24, 2020	
April 25, 2020	
April 26, 2020	
April 27, 2020	PM19,PM20,PM21
April 28, 2020	
April 29, 2020	
April 30, 2018	



MONTH	YEAR
MAY	2020

DATE	CYCLES
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May 1, 2020	
May 2, 2020	
May 3, 2020	
May 4, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
May 5, 2020	
May 6, 2020	PM01,PM02,PM03,PM04,PM05
May 7, 2020	
May 8, 2020	PM06
May 9, 2020	
May 10, 2020	
May 11, 2020	
May 12, 2020	PM07,PM08
May 13, 2020	PM09
May 14, 2020	PM10
May 15, 2020	PM11
May 16, 2020	
May 17, 2020	
May 18, 2020	
May 19, 2020	PM12,PM13,PM14
May 20, 2020	PM15
May 21, 2020	PM16
May 22, 2020	PM17,PM18
May 23, 2020	
May 24, 2020	
May 25, 2020	<i>Memorial Day</i>
May 26, 2020	
May 27, 2020	PM19,PM20,PM21
May 28, 2020	
May 29, 2020	
May 30, 2020	
May 31, 2020	

MONTH	YEAR
JUNE	2020

DATE	CYCLES
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June 1, 2020	
June 2, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
June 3, 2020	
June 4, 2020	
June 5, 2020	
June 6, 2020	
June 7, 2020	
June 8, 2020	
June 9, 2020	PM01,PM02,PM03
June 10, 2020	PM04,PM05
June 11, 2020	PM06
June 12, 2020	PM07,PM08
June 13, 2020	
June 14, 2020	
June 15, 2020	PM09
June 16, 2020	PM10,PM11
June 17, 2020	
June 18, 2020	PM12
June 19, 2020	PM13,PM14
June 20, 2020	
June 21, 2020	
June 22, 2020	PM15
June 23, 2020	PM16,PM17,PM18
June 24, 2020	
June 25, 2020	PM19,PM20,PM21
June 26, 2020	
June 27, 2020	
June 28, 2020	
June 29, 2020	
June 30, 2020	

MONTH	YEAR
JULY	2020

DATE	CYCLES
July 1, 2020	
July 2, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
July 3, 2020	Observed Independence Day
July 4, 2020	Independence Day
July 5, 2020	
July 6, 2020	
July 7, 2020	
July 8, 2020	PM01,PM02,PM03,PM04,PM05
July 9, 2020	PM06
July 10, 2020	
July 11, 2020	
July 12, 2020	
July 13, 2020	
July 14, 2020	PM07,PM08,PM09,PM10
July 15, 2020	PM11
July 16, 2020	
July 17, 2020	
July 18, 2020	
July 19, 2020	
July 20, 2020	PM12
July 21, 2020	Guam Liberation Day
July 22, 2020	PM13,PM14,PM15,PM16
July 23, 2020	
July 24, 2020	PM17,PM18
July 25, 2020	
July 26, 2020	
July 27, 2020	PM19,PM20,PM21
July 28, 2020	
July 29, 2020	
July 30, 2020	

MONTH	YEAR
AUGUST	2020

DATE CYCLES

August 1, 2020

August 2, 2020

August 3, 2020 PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30

August 4, 2020

August 5, 2020

August 6, 2020 PM01,PM02,PM03,PM04

August 7, 2020 PM05

August 8, 2020

August 9, 2020

August 10, 2020 PM06

August 11, 2020

August 12, 2020 PM07,PM08

August 13, 2020 PM09

August 14, 2020 PM10

August 15, 2020

August 16, 2020

August 17, 2020 PM11

August 18, 2020 PM12

August 19, 2020 PM13,PM14

August 20, 2020 PM15

August 21, 2020 PM16

August 22, 2020

August 23, 2020

August 24, 2020 PM17,PM18

August 25, 2020 PM19,PM20,PM21

August 26, 2020

August 27, 2020

August 28, 2020

August 29, 2020

August 30, 2020

	YEAR
SEPTEMBER	2020

DATE	CYCLES
September 1, 2020	
September 2, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
September 3, 2020	
September 4, 2020	
September 5, 2020	
September 6, 2020	
September 7, 2020	Labor Day
September 8, 2020	PM01,PM02,PM03
September 9, 2020	PM04
September 10, 2020	PM05,PM06
September 11, 2020	
September 12, 2020	
September 13, 2020	
September 14, 2020	
September 15, 2020	PM07,PM08,PM09,PM10,PM11
September 16, 2020	
September 17, 2020	
September 18, 2020	PM12
September 19, 2020	
September 20, 2020	
September 21, 2020	PM13,PM14
September 22, 2020	PM15,PM16,PM17,PM18
September 23, 2020	
September 24, 2020	
September 25, 2020	PM19,PM20,PM21
September 26, 2020	
September 27, 2020	
September 28, 2020	
September 29, 2020	
September 30, 2020	

	YEAR
OCTOBER	2020

DATE	CYCLES
------	--------

October 1, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
October 2, 2020	
October 3, 2020	
October 4, 2020	
October 5, 2020	
October 6, 2020	
October 7, 2020	PM01,PM02,PM03
October 8, 2020	PM04,PM05,PM06
October 9, 2020	
October 10, 2020	
October 11, 2020	
October 12, 2020	
October 13, 2020	PM07,PM08,PM09
October 14, 2020	PM10
October 15, 2020	PM11
October 16, 2020	
October 17, 2020	
October 18, 2020	
October 19, 2020	
October 20, 2020	PM12,PM13
October 21, 2020	PM14,PM15,PM16
October 22, 2020	PM17,PM18
October 23, 2020	
October 24, 2020	
October 25, 2020	
October 26, 2020	
October 27, 2020	PM19,PM20,PM21
October 28, 2020	
October 29, 2020	
October 30, 2020	
October 31, 2020	

	YEAR
NOVEMBER	2020

DATE CYCLES

November 1, 2020

November 2, 2020

*All Soul's Day*

November 3, 2020 PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30

November 4, 2020

November 5, 2020

November 6, 2020 PM01,PM02,PM03

November 7, 2020

November 8, 2020

November 9, 2020 PM04

November 10, 2020 PM05

November 11, 2020

*Veterans Day*

November 12, 2020

November 13, 2020 PM06,PM07,PM08,PM09

November 14, 2020

November 15, 2020

November 16, 2020 PM10

November 17, 2020 PM11

November 18, 2020 PM12

November 19, 2020 PM13

November 20, 2020 PM14,PM15

November 21, 2020

November 22, 2020

November 23, 2020 PM16

November 24, 2020 PM17,PM18

November 25, 2020 PM19,PM20,PM21

November 26, 2020

*Thanksgiving Day*

November 27, 2020

November 28, 2020

November 29, 2020

November 30, 2020

	YEAR
DECEMBER	2020

DATE	CYCLES
December 1, 2020	
December 2, 2020	PM22,PM23,PM24,PM25,PM26,PM27,PM28,PM29,PM30
December 3, 2020	
December 4, 2020	
December 5, 2020	
December 6, 2020	
December 7, 2020	PM01,PM02,PM03
December 8, 2020	<i>Our Lady of Camarin Day</i>
December 9, 2020	PM04,PM05,PM06
December 10, 2020	
December 11, 2020	PM07,PM08
December 12, 2020	
December 13, 2020	
December 14, 2020	PM09
December 15, 2020	PM10,PM11
December 16, 2020	
December 17, 2020	PM12
December 18, 2020	PM13,PM14
December 19, 2020	
December 20, 2020	
December 21, 2020	PM15,PM16
December 22, 2020	PM17
December 23, 2020	PM18
December 24, 2020	PM19,PM20,PM21
December 25, 2020	<i>Christmas Day</i>
December 26, 2020	
December 27, 2020	
December 28, 2020	
December 29, 2020	
December 30, 2020	
December 31, 2020	





**Guam Power Authority**  
**Aturidat Ilektrsedat Guahan**  
**MY ENERGY STATEMENT**

FLORENCIO,ELENITA R  
 PO BOX 7597  
 TAMUNING, GU 96931-7597

BALANCE FROM PREVIOUS STATEMENT	AMOUNT PAID	ARREARS	CURRENT PERIOD BILLING	PLUS/LESS ADJUSTMENTS	TOTAL AMOUNT DUE
\$321.47	\$0.00	\$321.47	\$300.78	\$0.00	\$622.25

**SERVICE INFORMATION**

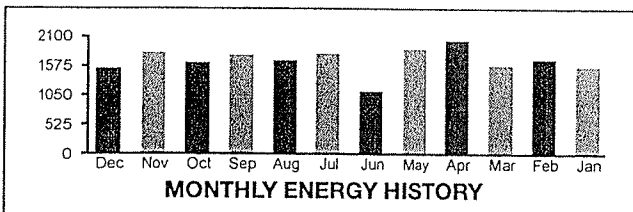
Account Number	2755400000
Primary Name	FLORENCIO,ELENITA R
Service Location	183 CHALAN TAN MARGARITA MACHANAO, DEDEDO
Bill Date:	02/17/2017
Due Date:	Upon Receipt



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SAVING  
TIPS**

Switch off TVs, stereos and other  
 electrical equipment rather than  
 leaving them on standby.



Register your residential account at [myenergyguam.com](http://myenergyguam.com)  
 to view your energy usage. For GPA EZ-Pay by Phone,  
 please contact 647-5787/8/9.

Read Date	Meter Nbr	Current Rdg	Previous Rdg	Multiplier	Consumption	Unit	Days	AveDly
02/14/2017	02005958	71357.85	69838.48	1	1,519.37	KWH	28	54.26
Billing Period		Statement Item		Quantity x Rate		Amount		
01/18/2017 - 02/14/2017		Electric Residential Rate - Schedule R -						
		Monthly Customer Charge				\$ 15.00		
		Energy Charge (First 500 kWh)				\$ 34.78		
		Energy Charge (Over 500 kWh)				\$ 88.55		
		Fuel Recovery Charge				\$ 159.61		
		Emergency Water-well/Wastewater Charge (Over 500 kWh)				\$ 2.84		
		Current Period Statement Amount				\$ 300.78		

\*\* Fuel Recovery Charge reflects the new Levelized Energy Adjustment Clause (LEAC) rate approved by the PUC effective February 1, 2017.  
 \* Account overdue, subject to immediate disconnection without further notice.  
 \* Payment in full required. Please disregard if payment has been made.

**Return this portion with payment. Keep above portion for your records. Important information on reverse side.**



Account Number: 2755400000  
 Due Date: Upon Receipt  
 Total Amount Due: \$622.25

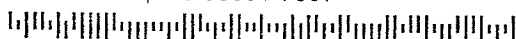
Amount Enclosed:

\$ 622.25



485 275542473878

GP022017 R1 C1\*\*\*\*\*SINGLE-PIECE 96913  
 FLORENCIO,ELENITA R  
 PO BOX 7597  
 TAMUNING, GU 96931-7597



Guam Power Authority  
 Aturidat Ilektrsedat Guahan  
 P.O. Box 21868 Barrigada, Guam  
 96921-1868

## IMPORTANT CUSTOMER INFORMATION

Visit our Website at [www.guampowerauthority.com](http://www.guampowerauthority.com)

### GPWA Customer Service Location and Business Hours

Offices are open Monday thru Friday, Saturday at GPWA Upper Tumon office, closed on Holidays. Business hours subject to change without notice. Payments can be made at various financial institutions, Guam Waterworks Authority and the Treasurer of Guam.

**Gloria B. Nelson Public Service Bldg.**  
688 Route 15, Fadian Mangilao  
7:00 am - 5:00 pm

**Hagatña Satellite Office**  
103 Julale Shopping Center  
8:00 am - 5:00 pm

**GPWA Upper Tumon Office**  
578 N. Marine Corps Dr., Tamuning  
7:30 am - 6:00 pm | 9:00 am - 1:00 pm

**By Phone:** GPA EZ-Pay by Phone Contact (671) 647-5787/8/9 7AM - 6PM; **Automated Pay by Phone (IVR)** 1-855-977-2002 24 hours; **Mobile App:** Pay GPWA.

Simply search for the following key words - Pay GPWA, Guam Power, Guam Water, and Guam Utilities in the Apple App store or in the Google Play Store.

**Via Online:** GPA online payment PayGPA at <https://www.paygpa.com/>. We accept VISA, MasterCard and Discover for the Residential Customers. Commercial Accounts are restricted to MasterCard only. Contact us for all inquiries at Customer Service Call Center (671) 647-5787/8/9 or email us at [customersfirst@gpagwa.com](mailto:customersfirst@gpagwa.com).

## EMERGENCY 24-HOUR SERVICE Dispatcher: (671) 475-1472/3/4

- Non-receipt of energy statement does not prevent your account from becoming due or payable.
- All Energy Statements are past due if unpaid 15 days after the "Statement Date"
- Past due balance must be paid at a GPA Customer Service Office to ensure timely receipt of your payment and to avoid service interruptions. Restoration of service may take up to 48 hours once full payment has been made.
- Your service may be disconnected if payment is received after the stated due date. If your service is disconnected, you may be required to pay your energy statement in full plus a reconnection fee, a service establishment charge and a cash deposit before your service is restored.
- **Late Payment.** Whenever a payment of a regular Energy Statement for electric service is received after 5:00 pm of the date specified in the original energy statement as the date such payment is due, an additional charge of .75% of the amount of said statement shall be assessed as your late payment charge.
- **When usage on your statement is Estimated.** We try to read your meter each month, but if for some reason we cannot, your energy statement will be based on an estimate of recent average use. You are responsible for ensuring that your meter is unobstructed and accessible.
- **Moving or Starting New Service.** Please visit our office at least two business days before moving or starting new service.
- **Life Support or Emergency Equipment.** Please contact Customer Service if anyone living in your home is dependent on life support or emergency equipment. However, because unplanned outages can and do occur, it is important for customers on life support to make alternative plans should the power go out at their homes.
- For other information regarding your service, account charges and rate schedules, please visit our website at [www.guampowerauthority.com](http://www.guampowerauthority.com) or call Customer Service.

To report illegal hookups/connections or suspected wrong doing at GPA call the Internal Audit Office.

**Hotline Number:** 671-648-3199 or email to [ia-rps@gpagwa.com](mailto:ia-rps@gpagwa.com). All reports are held in strict confidence.

### Update My Information

*Please allow 1-2 energy statement cycles for changes to take effect.*

Your Account Number: \_\_\_\_\_ Account Holder's Email: \_\_\_\_\_

Change my mailing address to street address/PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State/Territory: \_\_\_\_\_ ZIP: \_\_\_\_\_

Home Phone No.: \_\_\_\_\_ Work Phone No.: \_\_\_\_\_ Cell Phone No.: \_\_\_\_\_

Name of Account Holder: \_\_\_\_\_ Account Holder's Authorization Signature \_\_\_\_\_



**Guam Power Authority**  
**Aturidât Ilektrisedât Guahan**  
**MY ENERGY STATEMENT**

HIPOLITO, MARY K  
 PO BOX 8474  
 TAMUNING, GU 96931-8474

BALANCE FROM PREVIOUS STATEMENT	AMOUNT PAID	ARREARS	CURRENT PERIOD BILLING	PLUS/LESS ADJUSTMENTS	TOTAL AMOUNT DUE
\$244.60	\$-244.60	\$0.00	\$238.94	\$0.00	\$238.94

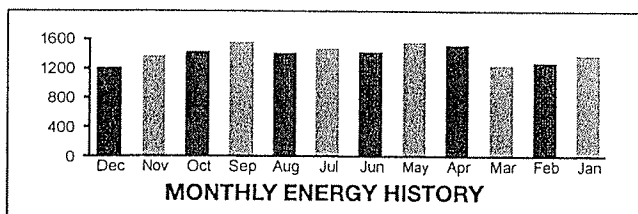
SERVICE INFORMATION	
Account Number	3728000000
Primary Name	HIPOLITO, MARY K
Service Location	381 CHALAN BONGBONG LN, DEDEDO
Bill Date:	02/17/2017
Due Date:	03/07/2017



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**ENERGY  
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TIPS**

Switch off TVs, stereos and other electrical equipment rather than leaving them on standby.



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Read Date	Meter Nbr	Current Rdg	Previous Rdg	Multiplier	Consumption	Unit	Days	AveDly
02/14/2017	02006509	44402.94	43201.24	1	1,201.70	KWH	28	42.92
Billing Period		Statement Item		Quantity x Rate		Amount		
01/18/2017 - 02/14/2017		Electric Residential Rate - Schedule R -						
		Monthly Customer Charge				\$ 15.00		
		Energy Charge (First 500 kWh)		500.00 x \$0.06955		\$ 34.78		
		Energy Charge (Over 500 kWh)		701.70 x \$0.08687		\$ 60.96		
		Fuel Recovery Charge		1,201.70 x \$0.105051		\$ 126.24		
		Emergency Water-well/Wastewater Charge (Over 500 kWh)		701.70 x \$0.00279		\$ 1.96		
		Current Period Statement Amount				\$ 238.94		

\*\* Fuel Recovery Charge reflects the new Levelized Energy Adjustment Clause (LEAC) rate approved by the PUC effective February 1, 2017.

**Return this portion with payment. Keep above portion for your records. Important information on reverse side.**



Account Number: 3728000000  
 Due Date: 03/07/2017  
 Total Amount Due: \$238.94

Amount Enclosed:

\$ 238.94



485 372809037898

GP022017 R2 C2\*\*\*\*\*SINGLE-PIECE 96913  
 HIPOLITO, MARY K  
 PO BOX 8474  
 TAMUNING, GU 96931-8474



Guam Power Authority  
 Aturidât Ilektrisedât Guahan  
 P.O. Box 21868 Barrigada, Guam  
 96921-1868

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City: \_\_\_\_\_ State/Territory: \_\_\_\_\_ ZIP: \_\_\_\_\_

Home Phone No.: \_\_\_\_\_ Work Phone No.: \_\_\_\_\_ Cell Phone No.: \_\_\_\_\_

Name of Account Holder: \_\_\_\_\_ Account Holder's Authorization Signature \_\_\_\_\_



**Guam Power Authority**  
**Aturidat Iktresedat Guahan**  
**MY ENERGY STATEMENT**

BALLON,JOSE  
 PO BOX 5230  
 HAGATNA, GU 96932-8660

BALANCE FROM PREVIOUS STATEMENT	AMOUNT PAID	ARREARS	CURRENT PERIOD BILLING	PLUS/LESS ADJUSTMENTS	TOTAL AMOUNT DUE
\$297.94	\$-142.91	\$155.03	\$143.48	\$0.00	\$298.51

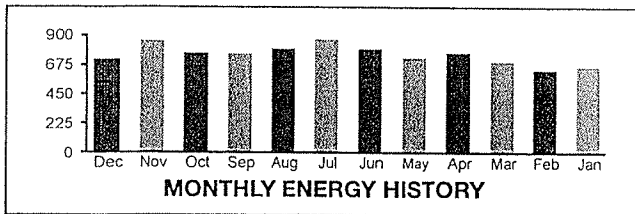
SERVICE INFORMATION	
Account Number	8177300000
Primary Name	BALLON,JOSE
Service Location	130 GARDENIA ST, DEDEDO
Bill Date:	02/17/2017
Due Date:	Upon Receipt



**ENERGY  
sense**  
 Bringing energy solutions to you!

**ENERGY  
SAVING  
TIPS**

Switch off TVs, stereos and other  
 electrical equipment rather than  
 leaving them on standby.



Register your residential account at [myenergyguam.com](http://myenergyguam.com)  
 to view your energy usage. For GPA EZ-Pay by Phone,  
 please contact 647-5787/8/9.

Read Date	Meter Nbr	Current Rdg	Previous Rdg	Multiplier	Consumption	Unit	Days	AveDly
02/14/2017	02006620	35420.76	34709.29	1	711.47	KWH	28	25.41
Billing Period		Statement Item		Quantity x Rate		Amount		
01/18/2017 - 02/14/2017		Electric Residential Rate - Schedule R -						
		Monthly Customer Charge				\$		15.00
		Energy Charge (First 500 kWh)		500.00 x \$0.06955		\$		34.78
		Energy Charge (Over 500 kWh)		211.47 x \$0.08687		\$		18.37
		Fuel Recovery Charge		711.47 x \$0.105051		\$		74.74
		Emergency Water-well/Wasterwater Charge (Over 500 kWh)		211.47 x \$0.00279		\$		0.59
		Current Period Statement Amount				\$		143.48

\*\* Fuel Recovery Charge reflects the new Levelized Energy Adjustment Clause (LEAC) rate approved by the PUC effective February 1, 2017.  
 \* Account overdue, subject to immediate disconnection without further notice.  
 \* Payment in full required. Please disregard if payment has been made.

**Return this portion with payment. Keep above portion for your records. Important information on reverse side.**



Account Number: 8177300000  
 Due Date: Upon Receipt  
 Total Amount Due: \$298.51

Amount Enclosed:  
 \$ 298.51



485 817737247765

GP022017 R3 C3\*\*\*\*\*SINGLE-PIECE 96913  
 BALLON,JOSE  
 PO BOX 5230  
 HAGATNA, GU 96932-8660

Guam Power Authority  
 Aturidat Iktresedat Guahan  
 P.O. Box 21868 Barrigada, Guam  
 96921-1868

## IMPORTANT CUSTOMER INFORMATION

Visit our Website at [www.guampowerauthority.com](http://www.guampowerauthority.com)

### GPWA Customer Service Location and Business Hours

Offices are open Monday thru Friday, Saturday at GPWA Upper Tumon office, closed on Holidays. Business hours subject to change without notice. Payments can be made at various financial institutions, Guam Waterworks Authority and the Treasurer of Guam.

**Gloria B. Nelson Public Service Bldg.**  
688 Route 15, Fadian Mangilao  
7:00 am - 5:00 pm

**Hagatña Satellite Office**  
103 Julale Shopping Center  
8:00 am - 5:00 pm

**GPWA Upper Tumon Office**  
578 N. Marine Corps Dr., Tamuning  
7:30 am - 6:00 pm | 9:00 am - 1:00 pm

**By Phone:** GPA EZ-Pay by Phone Contact (671) 647-5787/8/9 7AM - 6PM; Automated Pay by Phone (IVR) 1-855-977-2002 24 hours; **Mobile App:** Pay GPWA.

Simply search for the following key words - Pay GPWA, Guam Power, Guam Water, and Guam Utilities in the Apple App store or in the Google Play Store.

**Via Online:** GPA online payment PayGPA at <https://www.paygpa.com/>. We accept VISA, MasterCard and Discover for the Residential Customers. Commercial Accounts are restricted to MasterCard only. Contact us for all inquiries at Customer Service Call Center (671) 647-5787/8/9 or email us at [customersfirst@gpagwa.com](mailto:customersfirst@gpagwa.com).

## EMERGENCY 24-HOUR SERVICE Dispatcher: (671) 475-1472/3/4

- Non-receipt of energy statement does not prevent your account from becoming due or payable.
- All Energy Statements are past due if unpaid 15 days after the "Statement Date"
- Past due balance must be paid at a GPA Customer Service Office to ensure timely receipt of your payment and to avoid service interruptions. Restoration of service may take up to 48 hours once full payment has been made.
- Your service may be disconnected if payment is received after the stated due date. If your service is disconnected, you may be required to pay your energy statement in full plus a reconnection fee, a service establishment charge and a cash deposit before your service is restored.
- **Late Payment.** Whenever a payment of a regular Energy Statement for electric service is received after 5:00 pm of the date specified in the original energy statement as the date such payment is due, an additional charge of .75% of the amount of said statement shall be assessed as your late payment charge.
- **When usage on your statement is Estimated.** We try to read your meter each month, but if for some reason we cannot, your energy statement will be based on an estimate of recent average use. You are responsible for ensuring that your meter is unobstructed and accessible.
- **Moving or Starting New Service.** Please visit our office at least two business days before moving or starting new service.
- **Life Support or Emergency Equipment.** Please contact Customer Service if anyone living in your home is dependent on life support or emergency equipment. However, because unplanned outages can and do occur, it is important for customers on life support to make alternative plans should the power go out at their homes.
- For other information regarding your service, account charges and rate schedules, please visit our website at [www.guampowerauthority.com](http://www.guampowerauthority.com) or call Customer Service.

To report illegal hookups/connections or suspected wrong doing at GPA call the Internal Audit Office.  
**Hotline Number: 671-648-3199** or email to [ia-rps@gpagwa.com](mailto:ia-rps@gpagwa.com). All reports are held in strict confidence.

### Update My Information

*Please allow 1-2 energy statement cycles for changes to take effect.*

Your Account Number: \_\_\_\_\_ Account Holder's Email: \_\_\_\_\_

Change my mailing address to street address/PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State/Territory: \_\_\_\_\_ ZIP: \_\_\_\_\_

Home Phone No.: \_\_\_\_\_ Work Phone No.: \_\_\_\_\_ Cell Phone No.: \_\_\_\_\_

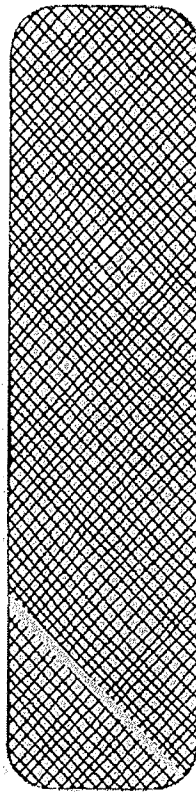
Name of Account Holder: \_\_\_\_\_ Account Holder's Authorization Signature \_\_\_\_\_

EXHIBIT C - SAMPLE OUTGOING ENVELOPE



GUAM POWER AUTHORITY  
ATURIDÂT ILEKTRESEDÂT GUAHAN  
P.O. Box 21868 Barrigada, Guam 96921-1868

STATEMENT ENCLOSED



PRESORTED  
FIRST CLASS MAIL  
U.S. POSTAGE PAID  
HAGATNA, GUAM  
PERMIT NO. 47



0 RFP Number: RE-SOLICITATION GPA-RFP-21-002

CLOSING DATE: 06/03/2021

0 Amendment: \_\_\_\_\_

# RFP REGISTER

TIME: 3:00 P.M.

	VENDOR (PLEASE PRINT)	FULL NAME (PRINT)	SIGNATURE	DATE	TIME	PHONE NUMBER/FAX NUMBER	E-MAIL ADDRESS	BID SUBMISSION		
								DATE	TIME	RECEIVER
1.	GRAPHIC CENTER	JESSIE RUZARCO	<i>Jessie</i>	5/25/21				06/01/21	12:37 PM	Jessie
2.	INPS SEND, INC.	BORIS RUZARCO		6/1/21	10:05 AM			6/1/21	10:05 AM	DF
3.	Hum Light BPO	Pete Nyc	<i>Pete Nyc</i>	6/02/21	3:02 PM			06/02/21	1:20 PM	Jessie
4.										
5.										
6.										
7.										
8.										
9.										
10.										

EXC



# GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN  
P.O. BOX 2977 • HAGĀTÑA, GUAM U.S.A. 96932-2977

May 27, 2021

AMENDMENT NO.: I

TO

REQUEST FOR PROPOSAL NO.: RE-SOLICITATION GPA-RFP-21-002

FOR

PROFESSIONAL PRINTING, MAILING, AND PROCESSING SERVICES RELATING TO UTILITY  
CUSTOMER BILLING

Interested Firms/Individuals are hereby notified of the following inclusions and response to inquiries received from Proponent No.: 1 dated May 25, 2021:

## INCLUSIONS:

Under Exhibit A – 2020 Billing Cycle, include Pages 50(a) and 50(b) of 59 (see attached).

## QUESTION:

1. Form of Contract – this is just an idea of what it will look like? I don't have to include this to our proposal?

## ANSWER:

The Form of Contract is a draft contract which will be executed upon award. Therefore, it is not required upon submission of the Technical Proposal.

## QUESTION:

2. Required forms – it states that exhibit A is required in our proposal but when looking at exhibit A in the bid packet its only a list of your billing cycles and dates. Note sure what to do here?

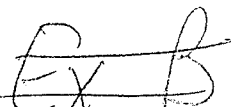
## ANSWER:

Kindly refer to *INCLUSIONS* above.

All other Terms and Conditions in the RFP package shall remain unchanged and in full force.

  
for JOHN M. BENAVENTE, P.E.  
General Manager

EXHIBIT "D"



Requirement		Yes	No	Partial	Explanation/Comments
A. Communication	A. 1 How do you receive the bill extract or letter file from us?				
	A. 2 What file formats can you accept?				
B. Security	B. 1 Does your system have data transfer security? If so, what type?				
	B. 2 Does your system have process security? If so, what type?				
C. Bill Format Software	C. 1 Do you support flexible bill formats as follows:				
	• Residential Bills (Exhibit B)				
	• Commercial Bills (Exhibit B)				
	• Landlord Bill (Exhibit B)				
	C. 2 Does your system provide the ability to customize the bill print appearance?				
	C. 3 Can you produce flexible, dynamic bills?				
	C. 4 Can you produce unbundled bills?				
	C. 5 Can you produce summary bills?				
	C. 6 Can you produce bills with dynamic marketing messages?				
	C. 7 Can you produce bills with dynamic logos?				
	C. 8 Can you produce bills with dynamic graphs and charts? (future option)				
	C. 9 Can you produce bills with bar codes?				
	C. 10 Can you produce bills in multiple languages? (future option)				
	C. 11 Can you produce bills with the remittance coupon on the top, bottom or either?				
	C. 12 Can you format flexible marketing letter, notices, and				
	C. 13 Number of colors able to use?				
	C. 14 Can you print the SCAN LINE on the bill using the font OCR-B?				
	C. 15 Can your system print 2 sided (back-to-back) LL bills?				
	C. 16 Can your system supports "two-up" (11 1/4 x 14) formats				
	C. 17 Can your system supports 8 1/2 x 11 format				
	C. 18 The system provides an out file of billing data for outsources printer and mailer				
C. 19 The system supports graphic images, shading, bolding and					
C. 20 The system will allow combining charges by type on the bill.					
C. 21 At a minimum the bill can present the following discrete data					
• Bill Date					
• Bill period for each service					
• Previous and Current Meter readings by meter					
• Rate Schedule per meter/service					
• Rate Description					
• Consumption being billed by service					
D. Electronic Archive	D. 1 Do you have electric archive capabilities? If so, what type?				
	D. 2 What method is used for retrieval of the archive?				
	D. 3 Can you integrate bill view with the billing system? If so, how?				
	D. 4 Can you reprint an exact copy of the bill from archive, including scan line, bar code, fonts, and graphs? If yes, what printer languages do you support for the reprint?				
	D. 5 What types of viewers do you support?				
	D. 6 What are your storage capabilities for printed data?				
	D. 7 What is your purge process of the stored data?				
	D. 8 Could customers view their historical bills on our website? If so, in what format?				
	D. 9 Can you integrate bill with the CC&B system? If so, how?				
E. Internet Email Delivery or Notification of Bill	E. 1 Can you e-mail bill notifications to customers? If so, what is the process for customers to view their bill from within the electronic notification?				
	E. 2 Can you provide exact bill representation, of the bills accessed from the electronic notification?				
F. Duplicate Bill	F. 1 explain your method.				
	• Meter size per service				
	• Meter number(s) per service				
	• Account Name				
	• Account Address				

Requirement	Yes	No	Partial	Explanation/Comments
<ul style="list-style-type: none"> <li>• Surcharges, fees, penalties and taxes with descriptions</li> <li>• Past Due Balance</li> <li>• Previous Balance</li> <li>• Current Amount Due</li> <li>• Bill Due Date</li> <li>• Next meter reading date</li> <li>• Consumption History Graph by service</li> <li>• Subtotal by service</li> <li>• Bill Messages</li> <li>• User defined Scan Line (Mod10)</li> <li>• Handling code. i.e. Opening bill, closing bill.</li> <li>• User defined data</li> </ul>				
G. Special Handling/Pull Bill				
G. 1 Can you pull a bill during production? If needed, could the bill be printed then returned to GUC?				
G. 1.1 If so, please explain your method for the following pull situations: pulling bill with a returned printed statement, pull a bill with archive only, and pull a bill to not process.				
G. 2 If necessary, could you pull a bill electronically?				
G. 3 Can you support special handling of certain accounts? Such as: archive only without a notification; archive and notify; archive, print and notify archive and print.				
H. Printer				
H. 1 Do you support duplex printing?				
H. 2 How many different paper stocks can you co-mingle into an envelope?				
H. 3 What are the different paper stocks your printers are capable of using?				
H. 4 Can you print checks, i.e. MICR? If so, can you insert the refund check with bill?				
I. Finishers/Insertion Equipment				
I. 1 Do you have intelligent insertion stations? If so, how many?				
I. 2 How many pages can you send in a #10 envelope, i.e., tri-fold?				
I. 3 How many pages can you send in a #6 envelope, i.e., one-fold? (future option)				
I. 4 Can you send bills in a flat envelope? (Future option)				
J. Mail				
J. 1 What steps do you take to insure lowest cost of postage?				
J. 2 Do you do address verification and postal sorting? If so, what software?				
J. 3 Do you support indicia mailing?				
J. 4 What type of mailing classes do you use? Indicate which carriers you use for the classes.				
K. Paper/Envelope				
K. 1 perforated paper?				
K. 2 window envelopes?				
K. 3 Do you offer Paper Design services? ( Future option)				
K. 4 How do you handle inventory control?				
K.4.1 Is there an additional cost for inventory control?				
K.4.2 Is there an additional cost for delivery?				
L. Processing Window				
L.1 Do you offer same -day processing of the billing statements?				
L.1.1 What is the cutoff for same-day processing?				
L.2 Do you have enough capacity to handle large volume increases during a daily cycle?				
M. Disaster Recovery Plan				
M.1 Do you have a disaster Recovery Plan established?				
M.1.1 Details should include testing scope and frequency as well as				
M.1.2 notified of an unplanned incident relevant to completion of a				
N. Reporting				
N. 1 Describe control handling for				
Balance Controls				
Out of balance procedures				
N. 2 How do you validate that transmittals sent by Guam Power Authority are complete and error free. How is the receipt of such files acknowledged?				
N. 3 How you communicate a mailing has been completed.				
N. 4 Can you provide a detailed timeline of each cycle/job, starting at receipt of the file to complete processing and mailing.				
O. Other Internet Services				
O.1 Describe any other services you may offer.				
P. Other Miscellaneous Accounts				
P.1 Does your system provide the ability to print other customized bills e.g. Landlord (LL) bills? (Please see Exhibit B)				
P.2 Can your system print 2 sided (back-to-back) LL bills?				
P.3 Can you send LL bills electronically?				
P.4 What are the mailing options for LL bills?				

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



**FAX**

<b>To:</b>	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 Email: <a href="mailto:jbenavente@gpagwa.com">jbenavente@gpagwa.com</a>	<b>From:</b>	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Mr. D. Graham Botha, Esq. General Counsel Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290 Email: <a href="mailto:gbotha@gpagwa.com">gbotha@gpagwa.com</a>	<b>Pages:</b>	12 (including cover page)
<b>CC:</b>	Mr. James M. Maher, Esq. Attorney for Appellant Law Office of James M. Maher 238 Archbishop Flores Street, Ste. 300 Hagatna, Guam 96910 Phone: (671) 477-7892 Email: <a href="mailto:jmpe671@gmail.com">jmpe671@gmail.com</a>	<b>Date:</b>	March 25, 2022
	Ms. Roxana Weil, Esq. Executive VP & Counsel Interested Party InfoSend, Inc. 4240 E La Palma Avenue Anaheim, California 92807 Phone: (714) 993-2690 Fax (714) 993-1306 Email: <a href="mailto:Roxana.w@infosend.com">Roxana.w@infosend.com</a>	<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-012 Decision

☐ For Review

☐ Please Comment

☒ Please Reply

☐ Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez, Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

Exhibit "3"



BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM

In the Appeal of	)	Appeal No: OPA-PA-21-012
	)	
	)	
Graphic Center, Inc.,	)	DECISION
	)	
Appellant.	)	
_____	)	

I. INTRODUCTION

This is the Decision of the Public Auditor, pursuant to 2 G.A.R. § 12110, for Appeal No. OPA-PA-21-012. Appellant GRAPHIC CENTER, INC (“Graphic Center”) filed its appeal on October 22, 2021, for review of the GUAM POWER AUTHORITY’s (the “GPA”) award of a contract under GPA-RFP-21-002 for the procurement of Professional Printing, Mailing, and Processing Services Relating to Utility Customer Billing to INFOSEND, INC. (“InfoSend”). The Appeal was heard on February 4, 2022, before Public Auditor Benjamin J. F. Cruz. James M. Maher, Esq. appeared on behalf of Appellant Graphic Center, D. Graham Botha, Esq. appeared for Respondent GPA, and Roxana Weil, Esq. appeared on behalf of Interested Party InfoSend.

II. JURISDICTION: STANDARD REVIEW

The decision of the Public Auditor under appeal is authorized by 5 G.C.A. § 5703. The determination of an issue, the findings of fact, and the decision of the Public Auditor are stated in 5 G.C.A. § 5704.

### III. FINDINGS OF FACT

The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted. 5 G.C.A. § 5703 (a), and in reaching this Decision, has considered and incorporates herein the procurement record and all documents submitted by the parties, and has considered the testimony and arguments made during the hearing held on February 4, 2022. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On May 13, 2021, GPA issued Request for Proposal No. GPA-RFP-21-002 for the Re-Solicitation of Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing.

2. Section 1.10 of the RFP, Post-Proposal Meeting stated:

After receipt of proposals, GPA may request additional information over the telephone or in individual meetings with selected OFFERORS to clarify and discuss their proposals.... GPA reserves the right to request clarifications from only those OFFERORS whom it deems in the best interests. All clarifications shall be documented by OFFERORS as addenda to the submittals.

3. Section 2.3 of the RFP, Standards for Determination of Most Qualified Offeror indicated:

In determining the most qualified OFFEROR, the Agency/Department shall be guided by the following:

- A. The ability, capacity and skill of the OFFEROR to perform the work specified.
- B. Whether the OFFEROR can perform promptly or within the specified time.
- C. The quality of performance of the OFFEROR with regards to awards previously made to him.
- D. The previous and existing compliance by the OFFEROR with laws and regulations relative to procurement.

4. Section 2.12 of the RFP, Required Forms, indicated:

All Offerors are required to submit current affidavits, as required below. Failure to do so will mean disqualification and rejection of the proposal.

- A. Major shareholders Disclosure Affidavit
- B. Non-Collusion Affidavit
- C. No Gratuities or Kickbacks Affidavit

- D. Ethical Standards Affidavit
- E. Declaration Re-Compliance with U.S. DOL Wage Determination
- F. F. Restriction Against Convicted Sex Offenders
- G. Exhibit A

5. At the end of the "Scope of Work" in the RFP, it indicated:

Additional Requests:

- Each Proponent must complete Exhibit A.

"Exhibit A – 2020 Billing Cycle" was included as part of the RFP packet.

6. Section 5.0 of the RFP, Evaluation Criteria indicated:

A committee will convene after the deadline for receipt of submittals to evaluate the respondents' qualifications based on, but not limited to the following criteria:

Criteria	Points	Weight
Experience of the firm in this type of service and utility scale	10	25%
Quality of approach and methodology that demonstrates an understanding of the requirements	10	25%
Quality, extent and relevance of Proponent's staff/ experience in conducting service(s) and utility scale.	10	25%
Overall presentation (Quality of submittal, professionalism, etc.)	10	15%
References	10	10%

A team composing of five (5) members will be chosen by the Authority to evaluate the proposals based on the above criteria. Each team member will rank each OFFEROR based on points received from the total weighted criteria. A final ranking will be determined by consolidating the team members' ranking.

7. On May 25, 2021, Graphic Center received the RFP packet, and submitted questions regarding the RFP, including a clarification on "Exhibit A".
8. On May 28, 2021, GPA Issued Amendment No. 1, which provided the additional "Exhibit A" attachments that were missing from the initial RFP packet. Graphic Center was the only potential bidder emailed Amendment No. 1.
9. On June 3, 2021, bids were received from InfoSend, Graphic Center, and Moonlight BPO.



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10. On June 7, 2021, GPA noted that upon review of the Major Shareholder Affidavit for Moonlight BPO, findings that the "percentage of shares held" was not indicated on the form pursuant to Public Law 36-13, and recommend that the proposal be rejected due to not meeting the required information.
  11. On June 18, 2021, the RFP Evaluation committee met to review the proposals submitted.
  12. On June 22, 2021, the Evaluation Committee drafted a memo to GPA's Supply Management Administrator requesting clarification from InfoSend.
  13. On July 1, 2021, GPA sent the request for clarification to InfoSend.
  14. On July 2, 2021, InfoSend responded to GPA's clarification questions.
  15. On July 27, 2021, the Evaluation Committee met and evaluated the proposals of Graphic Center and InfoSend.
  16. On July 28, 2021, the Evaluation Committee sent a memo to GPA's Supply Management Administrator indicating the Committee would like to proceed with the next step of the RFP process with InfoSend, which scored 491.5 out of 500, while Graphic Center scored 444.5 out of 500. This was approved by the General Manager on July 30, 2021.
  17. On August 18, 2021, GPA notified Graphic Center that InfoSend was selected as the best qualified offeror. GPA notified Moonlight BPO that its proposal was disqualified and rejected.
  18. On August 19, 2021, Graphic Center requested the procurement record and asked to meet with GPA to discuss why their company was not qualified, which GPA treated as a Freedom of Information Act (FOIA) request.
  19. On August 25, 2021, GPA responded to Graphic Center's FOIA request for the procurement record.

1 20. On August 30, 2021, Graphic Center filed an agency-level protest. In their protest, Graphic  
2 Center disputed the evaluation scores given to them and InfoSend. Graphic Center contested  
3 how InfoSend could score higher than them on printing and mailing delivery time, quality  
4 of approach and understanding of the requirements and experience evaluation criteria when  
5 InfoSend is not located on island and has not had any experience providing services directly  
6 to GPA like Graphic Center has.  
7

8 21. On October 7, 2021, GPA denied Graphic Center's protest.  
9

10 22. On October 14, 2021, Graphic Center requested for the supplement of the procurement  
11 record for the period September 1, 2021 to October 14, 2021, which GPA treated as a second  
12 FOIA request.

13 23. On October 18, 2021, GPA responded to Graphic Center's FOIA request for the  
14 supplemental procurement record.

15 24. On October 22, 2021, Graphic Center filed a procurement appeal with the Office of Public  
16 Accountability (OPA). Graphic Center alleged InfoSend's absence of a demonstrated record  
17 and development system cannot score higher on the evaluation criteria when compared to  
18 Graphic Center's demonstrated record of service to GPA for five years. In addition to the  
19 "six deficiencies" they re-highlighted from their protest letter, which they felt GPA failed to  
20 address, their appeal concerned one additional issue in that Graphic Center contends  
21 InfoSend submitted an Incomplete Packet and therefore was non-responsive because they  
22 failed to include "Exhibit A" in its bid packet, which would disqualify them and have their  
23 bid rejected. Graphic Center requested the OPA order GPA to disqualify InfoSend from  
24 eligibility for award as their bid was non-responsive and they were a non-responsible offeror,  
25  
26  
27  
28

1 with an ultimate award given to Graphic Center, as the next lowest price responsive bidder  
2 to the RFP.  
3

#### 4 IV. ANALYSIS

##### 5 A. GRAPHIC CENTER'S PROTEST THAT INFOSEND'S IS UNABLE TO MEET 6 THE REQUIREMENTS OF THE RFP AND GPA IMPROPERLY EVALUATED 7 THE PROPOSALS IS INVALID.

8 In its agency level protest, Graphic Center alleges six (6) deficiencies with InfoSend's bid and  
9 GPA's uncritical evaluation of those deficiencies that would deem InfoSend as non-responsive and  
10 non-responsible. Graphic Center questions how their record of service and experience with GPA for  
11 the past five years does not warrant them superior over InfoSend's proposal in the evaluation.

12 Guam Procurement requires GPA to evaluate proposals only on the evaluation factors stated in  
13 the RFP. 2 GAR § 3114 (f) (2) Graphic Center contends that there were two separate criteria in the  
14 RFP. However, the Public Auditor finds that Section 5.0 of the RFP entitled "Evaluation Criteria"  
15 was the one rightfully used by GPA to evaluate the proposals. The criteria identified in Section 5.0  
16 of the RFP is in line with the minimum factors identified in Guam Procurement, which are (A) the  
17 plan for performing the required services; (B) ability to perform the services reflected by technical  
18 training and education, general experience, specific experience in provided required services, and  
19 the qualifications and abilities of personnel proposed to be assigned to perform the services; (C) the  
20 personnel, equipment, and facilities to perform the services currently available or demonstrated to  
21 be made available at the time of contracting, and (D) a record of past performance of similar work  
22 2 GAR § 3114 (f) (2)  
23

24 Prior to evaluating the proposals, GPA's Evaluation Committee met on June 18, 2021 to  
25 review the proposals submitted and determined they wanted to seek clarification from InfoSend on  
26 the following:  
27  
28

- 1 1. How long will mail (USPS) take from California to Guam?
- 2 2. Is there a minimum bill print per batch or cycle? Guam Power Authority has 29 bill cycles
- 3 3. GPA's system does not have Intelligent Mail Barcode (IMB) and is not Coding Accuracy
- 4 Support System (CASS) compliant, will provide address validation? What services can you
- 5 4. Whose USPS postage permit will be used?
- 6 5. What is the timeframe from setup to go live?

7 On July 2, 2021, InfoSend responded to GPA's clarification questions, and on July 27, 2021, the  
8 evaluation committee met and evaluated both Graphic Center and InfoSend's proposal (including  
9 the additional clarifications) based on the criteria identified in Section 5.0 of the RFP. Although  
10 both proposals were determined to be responsive and responsible, the Evaluation Committee scored  
11 InfoSend's proposal higher and ranked it as the most qualified bidder of the two bidders. After  
12 conclusion of validation of qualifications, evaluation, and discussion, the head of the agency  
13 conducting the procurement or a designee of such officer shall select, in the order of their respective  
14 qualification ranking, no fewer than three acceptable offerors deemed to be the best qualified to  
15 provide the required services. 2 GAR § 3114 (j)

17 The offeror determined to be best qualified shall be required to submit cost or pricing data  
18 to the head of the agency conducting the procurement at a time specified prior to commencement of  
19 negotiations. 2 GAR § 3114 (k) On August 17, 2021, GPA then requested InfoSend submit pricing  
20 data, which InfoSend provided on August 23, 2021. If compensation, contract requirements, and  
21 contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded  
22 to that offeror. 2 GAR § 3114 (l) (3) InfoSend submitted its best and final pricing proposal on  
23 October 21, 2021. The Evaluation Committee was scheduled to meet on October 26, 2021, to review  
24 the proponents of InfoSend's Best and Final Offer, but Graphic Center filed the procurement appeal  
25 on October 22, 2021.

1 Graphic Center's main arguments for why InfoSend is unable to meet the RFP requirements is  
2 because unlike Graphic Center, InfoSend is located off-island and has not had the same five year  
3 experience providing service to GPA. Graphic Center also provided testimony that they spoke with  
4 the Postmaster on Guam who emphasized the delivery times from the U.S. Mainland exceed normal  
5 5-day delivery and are currently, for a host of reasons "severely delayed."

7 However, Kelly Law of InfoSend testified that they have been in the print, mail, and utility  
8 billing space since the inception of the company in 1996. They provide data processing, printing,  
9 and mailing services as well as e-billing services. To date, they have about 712 clients and  
10 approximately 600 of those are utility billers. In their proposal submitted, Ms. Law testified they  
11 provided utility clients with similar billing numbers as GPA or even greater as references. InfoSend  
12 has 185 employees across their production facilities. InfoSend has disaster recovery protection  
13 across their core production facilities, with servers synced to one location to the next, and allows  
14 them to continue to meet their service level agreements.

16 Ms. Law also testified that InfoSend is designated as a U.S.P.S. Detached mail unit, which means  
17 they have U.S.P.S. staff on site at their facility, where they work daily and accept mail from InfoSend  
18 on behalf of U.S.P.S. The mail is then transferred by the U.S.P.S. to the bulk mail facility unit. This  
19 allows InfoSend to skip a lot of the certification stuff as mail is inducted and proves InfoSends pre-  
20 sorting capabilities and following U.S.P.S. compliance and regulation. Ms. Law also testified that  
21 in her experience in dealing with the U.S.P.S., they do not give guarantees on mail turnaround times,  
22 and never have for first class mail, but do provide guidance. InfoSend provided in their RFP the  
23 U.S.P.S. turnaround time with induction zip code of Anaheim, California, and the mailing estimate  
24 to Guam, with the turnaround time listed as 5 days (back in May 2021 when InfoSend submitted  
25 their response to the RFP). Although the U.S.P.S. has changed expectations for mailing turnaround  
26  
27  
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1 time since InfoSend submitted its proposal, the estimated turnaround time has been consistent of 5  
2 days from California to Guam.  
3

4 The Public Auditor finds that Graphic Center has failed to prove that InfoSend is unable to meet  
5 the requirements of the RFP and that GPA's evaluation of the proposals were contrary to law, and  
6 therefore finds their protest to not be valid.

7 **B. GRAPHIC CENTER'S APPEAL THAT INFOSEND SUBMITTED AN**  
8 **INCOMPLETE PACKET WAS UNTIMELY**

9 Graphic Center's argument in its appeal that InfoSend submitted an Incomplete Packet and  
10 therefore was non-responsive because they allegedly failed to include "Exhibit A" in its bid packet,  
11 which would disqualify them and have their bid rejected, was not identified in its August 30, 2021  
12 agency level protest. It was only in its Notice of Procurement Appeal to the OPA on October 22,  
13 2021. GPA did not have a chance to address this issue within its October 7, 2021 agency decision,  
14 and therefore, the issue may not be properly before the Public Auditor.  
15

16 Whether an appeal is properly before the OPA is an issue of subject matter jurisdiction,  
17 which may be raised at any time. *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5 ¶¶  
18 21-11; see also *DFS Guam LP v. A.B. Won Pat Int'l Airport Auth, Guam*, 2020 Guam 20 ¶ 66.

19 In order for an appeal to be properly before the Public Auditor, it must be based on an agency  
20 denial of a timely protest, which is within the fourteen (14) day limit of when they knew or should  
21 have known the issue. A party should file a protest "when alleged misconduct forms the basis of a  
22 procurement protest, the time runs from the date on which the protesting party first learned of the  
23 purported misconduct." *Id.* ¶ 89. A protest filed more than 14 days after the disappointed offeror or  
24 bidder had notice of the grounds for the protest is barred as untimely. "[A]n aggrieved bidder must  
25 raise known defects in the solicitation process during the administrative review phase ... ." *Id.* ¶ 74.  
26  
27  
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1 In their initial protest, Graphic Center made no mention of the allegation that InfoSend did  
2 not submit "Exhibit A". Assuming that Graphic Center did not have the full InfoSend proposal as  
3 part of GPA's August 25, 2021 response to their request for the procurement record, the Public  
4 Auditor finds that this is not the start date of when Graphic Center "knew or should have known"  
5 about the alleged missing "Exhibit A" issue.  
6

7 However, after receiving the agency's denial of their protest, Graphic Center filed a second  
8 request for the procurement record on October 14, 2021, this time for documents from the period of  
9 September 1, 2021 to October 14, 2021. GPA responded to Graphic Center's request on October  
10 18, 2021, and Graphic Center filed their appeal with the OPA on October 22, 2021. In their appeal,  
11 Graphic Center first makes the allegation of InfoSend not submitted "Exhibit A". Therefore, the  
12 Public Auditor finds October 18, 2021 as the date for which Graphic Center "knew or should have  
13 known" about the alleged missing "Exhibit A" issue.  
14

15 It is clear that Graphic Center had full knowledge of the alleged missing "Exhibit A" from  
16 InfoSend's packet on October 18, 2021, when GPA responded to their request for the supplemental  
17 procurement record, because they included it as part of their procurement appeal to the OPA.  
18 Graphic Center had 14 days from October 18, 2021 to file protest to GPA on the alleged missing  
19 "Exhibit A" issue.  
20

21 Because Graphic Center did not file a protest with GPA and GPA did not have a chance to  
22 respond to the protest by issuing a decision on the matter, Graphic Center failed to exhaust the first  
23 administrative remedy. Therefore, the Public Auditor finds he has no subject matter jurisdiction.  
24 And because Graphic Center failed to file protest within 14 days of when they "knew or should have  
25 known" about the issue of the missing "Exhibit A", their protest and procurement appeal is  
26 considered untimely. This portion of Graphic Center's procurement appeal is dismissed.  
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V. CONCLUSION

Based on the foregoing, the Public Auditor makes the following determinations:

- A. Graphic Center's protest that InfoSend's is unable to meet the requirements of the RFP and GPA improperly evaluated the proposals is NOT VALID.
- B. Graphic Center's allegation that InfoSend submitted an incomplete packet by not submitting "Exhibit A" was UNTIMELY and therefore is DISMISSED WITH PREJUDICE as it is not properly before the Public Auditor.
- C. Graphic Center's appeal is hereby DENIED.
- D. The parties shall bear their respective costs and attorney's fees.

This is a Final Administrative Decision for Appeal No. OPA-PA-21-012. The Parties are hereby informed of their right to appeal the Public Auditor's Decision to the Superior Court of Guam in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA website at [www.opaguam.org](http://www.opaguam.org).

DATED this 25<sup>th</sup> day of March 2022.



BENJAMIN J.F. CRUZ  
Public Auditor of Guam



# RAZZANO WALSH & TORRES, P.C.

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Sender's Direct E-Mail:  
jdwalsh@rwtguam.com

February 3, 2023

**VIA EMAIL**

*MThompson@ttalaw.net*

Mitchell Thompson

**Thompson Thompson & Alcantara, P.C.**

**Re: Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam, and Infosend, Inc.; CV0207-22**

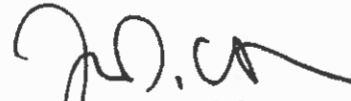
Mr. Thompson,

In conformance with the Scheduling Order submitted by the parties to the Superior Court on December 22, 2022, Appellant Graphic Center, Inc. designates for use in the Superior Court proceedings the transcribed proceedings from the following dates:

- OPA-PA-21-012 Formal hearing, Part A – February 4, 2022, Testimony of James Borja
- OPA-PA-21-012 Formal hearing, Part A – February 4, 2022, Testimony of John Kim

In conformance with the scheduling order, Plaintiffs have designated these with a court reporter, and are preparing transcripts of the above designated proceeding and provide them to the OPA for certification and submission to the Court as part of the record on review.

Sincerely,



**Joshua D. Walsh**

cc: *Roxana Weil (roxana.w@infosend.com)*  
*Graham Botha (gbotha@gpagwa.com)*

Pan American Building 139 Murray Blvd Suite 100 • Hagåtña, Guam 96910  
(T): 671-989-3009 (F): 671-989-8750

**Exhibit B**

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CLERK OF COURT

BY: SMJ

**IN THE SUPERIOR COURT OF GUAM**

GRAPHIC CENTER, INC.,

Plaintiff,

vs.

OFFICE OF PUBLIC ACCOUNTABILITY,  
GUAM POWER AUTHORITY, THE  
TERRITORY OF GUAM, AND INFOSEND,  
INC.,

Defendants.

**CIVIL CASE NO. CV0207-22**

**DECISION AND ORDER RE  
PLAINTIFF'S APPEAL OF OFFICE OF  
PUBLIC ACCOUNTABILITY'S  
DECISION**

**INTRODUCTION**

This matter came before the Honorable John C. Terlaje on October 15<sup>th</sup>, 2024, for a Motion Hearing and Oral Argument on the Briefs. Attorney Joshua D. Walsh appeared for Graphic Center, Inc and Attorney Marianne Woloschuk appeared for Guam Power Authority. Based on the relevant law and authorities the Court now issues the following decision and order **AFFIRMING IN PART AND DENYING IN PART** the Office of Public Accountability's ("OPA") denial of Graphic Center's procurement protest appeal of Guam Power Authority's ("GPA") Request for Proposal GPA-RFP-21-002 ("RFP").

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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**I. FACTUAL AND PROCEDURAL BACKGROUND**

Graphic Center, Inc. ("Graphic Center" or "Appellant") brought this civil action before the Superior Court of Guam under 5 G.C.A. § 5707 and 5 G.C.A. § 5480 to appeal the Office of Public Accountability's ("OPA") March 25, 2022 denial of Graphic Center's procurement protest appeal.

The relevant facts regarding the Appeal of the OPA's decision are as follows:

1. On May 13, 2021, Guam Power Authority ("GPA") issued Request For Proposal GPA-RFP-21-002 ("RFP"), seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing.
2. GPA received offers from three offerors: Moonlight BPO ("Moonlight"), Infosend, Inc. ("Infosend"), and Graphic Center, Inc. ("Graphic Center").
3. On May 28, 2021, GPA issued Amendment No. 1 to the RFP, which contained approximately seventy (70) additional questions to which offerors were to respond.
4. On August 11, 2021, GPA notified Moonlight that they were disqualified as an offeror for failing to provide an Affidavit of Disclosure of Major Shareholders, one of the required forms.
5. On August 11, 2021, GPA selected Infosend for Award of the RFP and requested that Infosend send a sealed price proposal by August 18, 2021.
6. On August 18, 2021, GPA notified Graphic Center that Infosend was selected for the intended award.
7. Graphic Center immediately requested access to the procurement record on August 19, 2021, and received the record on August 25.
8. Graphic Center submitted its agency-level protest on August 30, 2021, which GPA denied on October 7, 2021.

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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9. Graphic Center made a second request for access to the procurement record on October 14, 2021, and subsequently appealed GPA's decision to the OPA on October 22, 2021.
10. The OPA conducted an evidentiary hearing on February 4, 2022, during which it was established that GPA used Section 5 of the RFP to make a final evaluation of the offerors rather than Section 2.3. During the hearing, the record also showed that Infosend failed to respond to the Amendment to the RFP as was required.
11. The OPA denied Graphic Center's appeal on March 25, 2022, determining that the OPA did not have subject matter jurisdiction to consider Infosend's non-responsiveness because Graphic Center had not brought that issue on its appeal before GPA.
12. Graphic Center brought the present appeal of the OPA's decision which it filed on April 5, 2022.

**II. LAW AND DISCUSSION**

Under 5 G.C.A. § 5704(a), "[a]ny determination of an issue or a finding of fact by the Public Auditor shall be final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law." 5 G.C.A. § 5707 specifically gives "[a]ny person receiving an adverse decision" the right to appeal that decision "by the Public Auditor to the Superior Court of Guam..." and 5 G.C.A. § 5480(b) gives the Superior Court particular jurisdiction "over an action between Guam and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the statutes and regulations." According to the Guam Supreme Court, the Superior Court has full authority to resolve "any outstanding and disputed factual questions," but generally should not relitigate the issues.

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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*Teleguam Holdings II*, 2018 Guam 5 ¶ 32. Legal questions should be considered *de novo*, but with “great weight” given to the decision of the Public Auditor. *Id.*

Upon using this standard of review, the Court makes the following determinations.

**A. The Court affirms OPA’s finding that Graphic Center could not argue the issue of Infosend’s non-responsiveness because OPA’s finding was not contrary to law.**

Under Guam Procurement law, a dissatisfied offeror may make a written protest to the agency at issue within fourteen (14) days of becoming aware of the facts related to said protest. 5 G.C.A. § 5425(a). Only after making such a written protest may the offeror proceed to make an appeal to the OPA on that issue. 5 G.C.A. § 5703. In this case, the OPA correctly asserted that because Graphic Center had not brought up the issue of missing documentation on Infosend’s part in a formal written protest to GPA, OPA could not hear the appeal on this issue. Graphic Center’s original protest to GPA did not identify any missing documentation, and instead focused its protest mainly on the fact that Infosend is based on California and not on Guam. Even if Graphic Center was not aware of the information missing from Infosend’s application at the time of its original protest, it should have filed an additional written protest with GPA within 14 days of becoming aware, rather than including the issue only in its appeal to OPA. Because the OPA’s determination on this legal issue was not contrary to law, this decision is affirmed.

**B. The Court affirms OPA’s finding that the evaluation criteria used by GPA did not deviate from the announced criteria, because OPA’s finding was not arbitrary, capricious, or clearly erroneous.**

Under 5 GCA § 5216(e), the purchasing agency should make the award “to the offeror determined...to be best qualified based on the evaluation factors set forth in the Request for

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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Proposals...If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified...”

This particular Request for Proposals included Section 2.3, containing Standards for Determination of Most Qualified Offeror, and Section 5.0, containing the RFP Evaluation Criteria.

Graphic Center claims that GPA was required to use Section 2.3 of the RFP in its evaluation, and by failing to do so misapplied the stated evaluation criteria. Plaintiff's Br. at 5 (Aug. 28, 2024). GPA has responded to this allegation by arguing that “no reasonable bidder” would confuse Section 2.3 and Section 5.0, and “being deemed the most qualified offeror does not spell the end of the process because bidders know that they need their RFP to pass muster under the minimum criteria for evaluating RFPs for services.” Defendant's Brief at 9 (September 27, 2024).

While this Court can see and understand why Graphic Center may have been confused about which evaluation criteria from the RFP was being used to evaluate the offers, Graphic Center had access to both sets of criteria and knew or should have known that it was possible they would be evaluated under both or either of these sets of criteria. Therefore, this Court finds that OPA's decision to uphold GPA's evaluation of the offerors was not arbitrary, capricious, or clearly erroneous, and this decision is affirmed.

**C. The Court denies OPA's conclusion that there was not an issue of an incomplete procurement record because this conclusion was arbitrary, capricious, or clearly erroneous and remands this issue back to OPA.**

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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Although OPA was correct in most of their findings, this Court remains concerned about the issue of the procurement record in this case. Guam law mandates that "each procurement officer shall maintain a complete record of each procurement." 5 G.C.A. § 5249. In 2018, the Guam Supreme Court determined that when an appealing party can establish that there are items missing from the procurement record that were material to the procurement, the Court has the authority to cancel the award. *Telegram Holdings LLC v. Territory of Guam*, 2018 Guam 5 ¶ 39-41. The Guam Supreme Court specified that missing procurement records are considered "material" when their absence thwarts judicial review in "determining whether the appealing party is entitled to the relief requested." *Id.* at ¶ 39.

Through Graphic Center's Freedom of Information Act (FOIA) request, it is clear that Infosend did not include all of the required information in their initial response to the RFP. Graphic Center has argued that there is evidence from a GPA employee that Infosend was granted an exemption by GPA which prevented its disqualification. GPA denied this claim in a hearing before this Court on October 15, 2024, stating that Infosend addressed all required elements and there was no exception made. Regardless of which set of facts is true, it remains that the procurement record contains no explanation as to why Infosend's offer was allowed to continue while missing key documents, but Moonlight's offer was rejected for that reason.

As Graphic Center argues in its Opening Brief, "the Procurement Record contains no support or reasoning for holding one offeror to a stricter standard and another to a less strict compliance standard and then rewarding the latter with an award as the best qualified." Plaintiff's Br. at 7. Although GPA has argued orally that no exemption was made for Infosend and that Infosend's initial response contained all required documentation, the procurement record does not clearly support these statements.

**DECISION AND ORDER RE PLAINTIFF'S APPEAL OF OPA DECISION**

*CV0207-22; Graphic Center, Inc. v. Office of Public Accountability, Guam Power Authority, The Territory of Guam and Infosend, Inc.*

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However, it remains to be seen whether Graphic Center sufficiently showed to OPA that missing elements of the procurement record were “material” or thwarted judicial review, mainly because OPA failed to substantially engage in this question. Because OPA did not fully engage with the procurement record issues in its decision, rather than cancel the award from GPA to Infosend, the Court remands this matter to the OPA for further agency investigation and record development to determine the materiality of the information missing from the procurement record. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (“If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.”).

**III. CONCLUSION AND ORDER**

Based on the foregoing, the Court **AFFIRMS IN PART AND DENIES IN PART** the Office of Public Accountability’s denial of Graphic Center’s procurement protest appeal of Guam Power Authority’s Request for Proposal GPA-RFP-21-002, and remands the issue of the procurement record back to OPA for further agency investigation and record development.

SO ORDERED 10/29, 2024.

  
\_\_\_\_\_  
HON. JOHN C. TERLAJE  
Judge, Superior Court of Guam



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CLERK OF COURT

BY: T

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*Attorneys for Plaintiff,  
Graphic Center, Inc.*

**IN THE SUPERIOR COURT OF GUAM**

GRAPHIC CENTER, INC.

Plaintiff.

v.

OFFICE OF PUBLIC  
ACCOUNTABILITY, GUAM POWER  
AUTHORITY, THE TERRITORY OF  
GUAM and INFOSEND, INC.,

Defendants.

Civil Case No. CV0207-22

**OPENING BRIEF**

**I. INTRODUCTION**

Graphic Center, Inc. ("Graphic Center" or "Appellant") has brought this civil action under 5 G.C.A. § 5707 and 5 G.C.A. § 5480 to appeal the Office of Public Accountability's ("OPA") denial of Graphic Center's procurement protest appeal of Guam Power Authority ("GPA") Request For Proposal GPA-RFP-21-002 ("RFP"), issued on May 13, 2021, seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing. Graphic Center asserts that the GPA award to offeror Infosend, Inc. ("Infosend") was improper

and contrary to law.<sup>1</sup> This Opening Brief is submitted in conformance with this Court's Scheduling Order executed on July 17, 2024.

## II. STANDARD OF REVIEW

The Superior Court of Guam looks at the determinations of the OPA with a clean slate, since on Guam the decisions of the Public Auditor are reviewed by the Superior Court of Guam under a *de novo* standard. *DFS Guam L.F v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20 ¶ 43 (citations omitted). The Public Auditor's determination of facts "shall be final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law." 5 G.C.A. § 5704(a). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. US. Gypsum Co.*, 333 U.S. 364, 395 (1948). The Public Auditor's determinations "shall not be conclusive on any court having competent jurisdiction." 5 G.C.A. § 5704(b).

## III. RELEVANT FACTUAL AND PROCEDURAL HISTORY

The Guam Power Authority ("GPA") issued Request for Proposal GPA-RFP-21-002 ("RFP") on May 13, 2021. The RFP was seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing. Record on Appeal Submitted by the OPA on July 18, 2024 ("ROA"), 10. GPA issued Amendment No. 1 to the RFP on May 28, 2021. ROA, p. 73. That Amendment contained approximately seventy (70) questions to which offerors were to respond. *See* ROA, p. 74-75 (Decision, OPA-PA-21-012, 9).

Infosend did not respond with either the Amendment or the answers to the questions propounded in the Amendment. ROA, p.1358. GPA did **not**

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<sup>1</sup> Infosend is aware of this civil action, but through its general counsel has informed the parties that Infosend has declined to participate in defense of this action. *See*, Plaintiff's Status Report, December 20, 2022. Infosend has effectively defaulted as a Defendant. *Mariano v. Surla*, 2010 Guam 2, ¶ 1 (Guam Feb. 26, 2010).

disqualify Infosend. On August 11, 2021, GPA disqualified Moonlight BPO as an offeror for failing to provide another form —the Affidavit of Disclosure of Major Shareholders. *See* ROA, p. 1359 (Decision, OPA-PA-21-012, 10 &17). The procurement record contains no information regarding why GPA ignored Infosend's non-responsiveness, but disqualified Moonlight BPO.

On August 11, 2021, GPA selected Infosend for Award of the RFP. *See* ROA, p. 1359 (Decision, OPA- PA-21 -0 12, ¶17). GPA notified Graphic Center of the intended award to Infosend seven days later on August 18, 2021. ROA, p. 1359 (Decision, OPA-PA-21-012, 17). On August 30, 2021, Graphic Center submitted its agency level protest. ROA, p. 77. The protest challenged the GPA determination that Infosend was the best qualified responsive offeror since the plain language of RFP required that all offerors provide all required forms of the RFP ROA, p. 1-3. Graphic Center also disputed the inconsistent evaluation scoring conducted by GPA that was inconsistent with § 2.3. ROA, p. 1-3.

Graphic Center was later informed that §2.3 was not the criterion by which GPA evaluated the offerors, and GPA denied Graphic Center's protest on October 7, 2021. ROA, p. 80, (Decision, OPA-PA-21-012, 21). Graphic Center appealed to the OPA on October 22, 2021. ROA, p. 1. Just prior to filing its OPA appeal, on October 14, 2021, Graphic Center sought review of the procurement record via a Freedom of Information Request ("FOIA") for the period September 1, 2021 through October 14, 2021. *See* ROA, p. 1360 (Decision, OPA-PA-21-012, 22). The FOIA response confirmed that Infosend's bid failed to include the Amendment and failed to answer the questions the Amendment propounded.

The OPA Denied the Graphic Center appeal on March 25, 2022, and Graphic Center timely appealed the OPA's Decision ("decision") on April 5, 2022.

This appeal followed.<sup>2</sup>

#### IV. RELEVANT FACTUAL RECORD

GPA published a Request For Proposal GPA-RFP-21-002 ("RFP") on May 13, 2021 seeking offerors to provide GPA Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing. ROA, p. 10. Graphic Center, Infosend, Inc. and Moonlight BPO all responded to the RFP. ROA, p. 1358. GPA disqualified Moonlight BPO as an offeror for failing to provide an Affidavit of Disclosure of Major Shareholders, a required form of the RFP. ROA, p. 1359. While Infosend also failed to provide a required component of the bid package, GPA nevertheless selected Infosend as the best qualified offeror and Graphic protested Infosend's selection. ROA, p.1359.

The OPA conducted an evidentiary hearing on February 4, 2022. ROA, p. 1356 (Decision OPA- PA-21-012, p.1 L18-19). During the evidentiary hearing, Graphic Center confirmed that GPA evaluated the offerors under § 5 of the RFP, instead of §2.3 which explicitly set the "Standards for Determination of Most Qualified Offeror." ROA, p. 1361 (Decision, OPA-PA-21-012, p. 6 L7-23); Transcript of Proceedings, 11-15; 20-22. Furthermore, none of GPA's representatives at the evidentiary hearing disagreed that §2.3 of the RPF was the criterion by which the offerors were to be evaluated. *See*, Transcript of Proceedings, 22. More, no evaluator could provide an explanation for GPA's election to utilize § 5.0 instead of § 2.3 to determine the most or best qualified offeror. During the course of the evidentiary hearing, the witnesses also agreed that the RFP's use of two (2) separate evaluation criteria lists rendered the RFP confusing to the offerors. *See*, Transcript of Proceedings, (John Kim) 22-25. GPA

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<sup>2</sup> Graphic Center's counsel throughout the administrative review and subsequent appeal of this matter was Attorney James M. Maher. Mr. Maher — a solo practitioner— passed away on May 29, 2022. Undersigned counsel entered this civil action on September 13, 2022.

witnesses also confirmed Infosend's non-responsiveness. They agreed that Infosend's response did not include the required Amendment, that the amendment submission was required by the RFP, and that they saw no responsive answers from Infosend as the Amended required. *See*, ROA, p. 1358. GPA's evaluation and selection of Infosend was also flawed, in that GPA did not contact or verify Infosend's provided references or factor into its evaluation the inherent delays and costs associated in providing the requested services from California for its Guam customer base. *See*, Transcript of Proceedings, 21.

Despite these clear failings in GPA's acceptance of a non-responsive bid and misapplication of the stated evaluation criteria, the OPA concluded that the award to Infosend could stand. The Public Auditor's decision to ignore the non-responsiveness of Infosend's bid was built upon the OPA's belief that it was without subject matter jurisdiction to consider the issue since Graphic had not raised the issue in its initial protest to GPA. The Public Auditor denied Graphic's Appeal. ROA, p. 1366, (Decision, OPA-PA-21-012).

## **V. THE DECISION OF THE PUBLIC AUDITOR DOES NOT CONFORM TO LAW**

### **A. THE PUBLIC AUDITOR'S FINDINGS THAT INFOSEND'S BID COMPLIED WITH THE RFP AND THAT GPA'S ACCEPTANCE OF INFOSEND'S BID AS RESPONSIVE WERE ARBITRARY, CAPRICIOUS, CLEARLY ERRONEOUS, OR CONTRARY TO LAW.**

The OPA's determination that Infosend submitted a responsive bid that was properly evaluated by GPA is not supported by law. "Responsive bidder means a person who has submitted a bid with conforms in all material aspects to the Invitation for Bids." 5 G.C.A. § 5210(g). Adherence to the plain language of the RFP is essential for bidders and the integrity of the procurement system. *Baldrige v. Government Printing Office*, 513 Fed. Appx. 965, 967 (Fed. Cir. 2013) ("If the plain language of the RFP unambiguously called for decluttered

lamine film, that language controls."); *Professional Bldg. Concepts, Inc. v. City of Cent. Falls Housing Authority*. 783 F Supp. 1558, 1563 (U.S. Dist. Ct. 1992). ("Unless ambiguous, it is the language of the RFP which controls the form that a bid guarantee must take.")

Here, there is no dispute that GPA's RFP § 2.12 plainly required that offerors' respond to provide all required forms identified in the RFP. There is no factual dispute that Graphic Center submitted all required forms with its response, including the Amendment. Infosend did not. As such, only Graphic Center remained as the one responsive offeror to the bid.

**B. THE PROCUREMENT RECORD IN THIS MATTER DOES NOT COMPLY WITH LAW, DOES NOT JUSTIFY GPA'S PROCUREMENT DECISION, AND REQUIRES THAT THE INTENDED AWARD TO INFOSEND BE VACATED.**

Dawn Fejeran of GPA testified that each bidder was required to submit the Amendment in its response. She also confirmed that Infosend did not submit the Amendment with its response. Verified Complaint, ¶44. Infosend's General Counsel Kelly Law corroborated during the OPA hearing Ms. Fejeran's testimony by conceding that Infosend, though aware of the Amendment, failed to include it in its response. Simply put, there is no factual dispute that Infosend failed to include the required form in its response and consequently failed to answer the questions that the Amendment propounded.

The only explanation offered for the incongruity was provided by Ms. Fejeran, who testified that GPA granted Infosend an exemption from submitting the Amendment which prevented disqualification. Verified Complaint, ¶47. This averment itself supports vacating this procurement, since Ms. Fejeran also testified that there is no record, public or otherwise, of GPA granting the claimed exemption to GPA. Guam law mandates that "each procurement officer shall maintain a complete record of each procurement." 5 G.C.A.

§ 5249. The law does not provide an exhaustive list of what a complete record contains, but instead provides a non-exhaustive list of items that “the record shall include.” 5 G.C.A. § 5249. Under the law, GPA was required by Guam’s procurement laws to maintain a procurement record during the RFP process, and to make sure that the record includes everything essential to understanding how the award was made, and why certain agency actions — such as the claimed action of providing one bidder with an exception not afforded others — were made.

Guam law categorically and independently prevents an award when the material record of the procurement was not properly maintained. Under Guam law, “a complete procurement record is required by law for an award,” *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 35 (Guam May 14, 2018), *citing* 5 G.C.A. § 5250. Public Auditor was required to engage in a substantive analysis of the evidence or the procurement record pursuant to *Teleguam Holdings*, but failed to do the analysis. Rather than find that GPA committed a procurement error by failing to keep a record that reflects exemptions provided to an individual bidder, or to even engage with the issue as required by *Teleguam Holdings* and the relevant procurement statutes, the Public Auditor failed to comply with the law or engage with the procurement record issue. His decision should be overturned.

There is no factual support, or support in the record, for GPA’s determination to disqualify Moonlight BPO for failing to include a required form in its response and to not disqualify Infosend for failing to include a required form in its response. Conversely, there is no factual support, or support in the record, for GPA refusing to grant Moonlight BPO an exemption as GPA granted Infosend. Put another way, the Procurement Record contains no support or reasoning for holding one offeror to a stricter standard and another to a less strict compliance standard and then rewarding the latter with an award as the best qualified. There is no factual basis or support in the record for the OPA

affirming GPA's disparate treatment of offerors or for failing to hold GPA to the terms and conditions of its RFP. Similarly, there is no factual support, or support in the record, for the determination by GPA or by OPA that Infosend's response was responsive. The law does not allow this.

To protect the integrity of the bidding process, a procurement record must be kept and maintained. 5 G.C.A. § 5252 (a). That record must include "the date, time, subject matter and names of participants at any meeting, including government employees that in any way related to a particular procurement" and "a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which in any way related to the procurement." 5 G.C.A. § 5249 (a) & (b).

The absence of records material to an award thwarts judicial review. *Teleguam Holdings LLC. Territory of Guam et.al.* 2018 Guam 5, ¶ 39. That has occurred here, and the Court must correct the OPA's error. *See, Connected Glob. Sols., LLC v. United States*, 162 Fed. Cl. 720, 740 (2022) ("The Court's task is to determine whether an agency's evaluation and award decision have a rational basis and do not violate statutory or regulatory requirements, prohibitions, or standards.")

It evident that the procurement record is incomplete, that GPA failed to maintain a complete procurement record as required by 5 G.C.A and that certification of the procurement record was improper. Graphic Center raised these deficiencies and the incomplete nature of the procurement record when they were revealed yet the OPA affirmed of GPA's denial of Graphic's protest which was arbitrary, capricious, clearly erroneous, or contrary to law. Because of these failings, the law mandates that the Court cancel the award.

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**C. THE PUBLIC AUDITOR'S FINDING THAT GPA APPLIED THE  
CORRECT CRITERION TO EVALUATE THE OFFERORS IS  
ARBITRARY, CAPRICIOUS, CLEARLY ERROR1EOUS, OR  
CONTRARY TO LAW.**

GPA's denial of Graphic Center's protest also revealed a fundamental error regarding GPA's use of the incorrect criterion to evaluate the offerors' bids and revealed a disparate, material mistreatment of bidders in this matter. In the evidentiary hearing, it became evident that GPA utilized § 5.0, and not §2.3 of the RFP to evaluate the offerors' bids. GPA provided no rational explanation for the inclusion of two (2) separate evaluation criteria in the RFP or an explanation for choosing one evaluation standard while ignoring the other standard. Verified Complaint, ¶68. There is no factual support, or support in the record, that GPA informed the offerors that the sole criterion to determine the most qualified offeror was instead § 5.0, and not § 2.3 of the RFP that was explicitly listed as containing evaluation criteria. ROA, p. 1361-1362.

As discussed *supra*, GPA conceded that an RFP containing two (2) separate evaluation standards was confusing, but despite this, the OPA erred in holding that GPA properly utilized§ 5.0 of the RFP because it contains the factors identified in 2 GAR, § 3 1 14(f)(2). This was in error, as the factors identified in 2 GAR § 3114 (f) (2) are substantively more similar to those found in § 2.3. The OPA simply got this wrong.<sup>3</sup>

The fact remains that GPA issued an RFP that contained two (2) separate evaluation criteria which created unnecessary confusion and ambiguity respecting the government's underlying requirements and to the offerors. GPA's

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<sup>3</sup> § 5.0 addresses the cosmetic nature of an offeror's bid (in "overall presentation", "methodology that demonstrates an understanding of the requirements' and "references") in contrast to § 2.3 which addresses an offeror's "ability, capacity and skill ... to perform the work specified," ...performance promptly or within specified time", quality of performance with regards to awards previously made... ".

Evaluation Committee's bid scoring, based without explanation on § 5.0 of the RFP, was an erroneous evaluation standard and rendered GPA's determination invalid, and the OPA's Decision was arbitrary, capricious, clearly erroneous or contrary to law. It is fundamental to good procurement practice that “agencies must evaluate proposals and make source selection decisions following the terms of the solicitation.” *Connected Glob. Sols., LLC v. United States*, 162 Fed. Cl. 720, 741 (2022). *See also, One Largo Metro, LLC v. United States*, 109 Fed. Cl. 39, 81 (2013)(“It is a fundamental tenet of procurement law that proposals must be evaluated in accordance with the terms of the solicitation.”)

Like the failing of the procurement record in capturing why Infosend was afforded certain exceptions regarding its responses to the RFP, GPA's failure to reflect in its procurement record the abandonment of §2.3 evaluation criteria similarly prevents an award to Infosend.

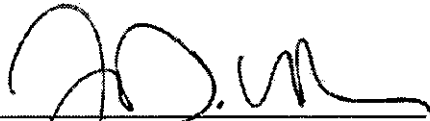
## VI. CONCLUSION

GPA made an award to an untested off island vendor that was not fully responsive to the issued RFP and that was evaluated using criteria that deviated from the announced criteria contained in the RFP. The record of procurement kept by GPA explains none of this, and this material failing prevents a legal award to Infosend. Because of these failings, Graphic Center respectfully requests that this Court issue determining an order that an award to Infosend is contrary to law, and that Graphic Center, as the lowest priced remaining responsive bidder, be made the awardee of the RFP. Alternatively, the Court should remand the matter for further agency investigation and record development. *Active Network, LLC v. United States*, 130 Fed. Cl. 421, 427–28 (2017) (“if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course ... is to remand to the agency for additional investigation or

explanation.”)

*Respectfully submitted* on this 28th day of August 2024.

**RAZZANO WALSH & TORRES, P.C.**

By:   
\_\_\_\_\_  
**JOSHUA D. WALSH**  
*Attorneys for Plaintiff*

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CLERK OF COURT

BY: \_\_\_\_\_

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*Attorneys for Plaintiff,  
Graphic Center, Inc.*

**IN THE SUPERIOR COURT OF GUAM**

GRAPHIC CENTER, INC.

Plaintiff.

v.

OFFICE OF PUBLIC  
ACCOUNTABILITY, GUAM POWER  
AUTHORITY, THE TERRITORY OF  
GUAM and INFOSEND, INC.,

Defendants.

Civil Case No. CV0207-22

**REPLY BRIEF**

**I. INTRODUCTION**

Graphic Center, Inc. ("Graphic Center" or "Appellant") provides this reply brief to address the contentions raised by the Guam Power Authority ("GPA") in its Opposition submission of September 27, 2024 ("Opposition").

**II. ARGUMENT IN REPLY**

**A. GPA DOES NOT CONTEST THAT ITS EVALUATORS SHIFTED AWAY FROM  
THE RFP'S ESTABLISHED EVALUATION CRITERIA.**

GPA claims in its opposition that a newly prepared "comparison" between the standards set down in Section 5.0 of the RFP show a correlation with the

evaluation criteria set in section 2.3 of the RFP. Opposition 9-10. GPA's new correlation chart, however, does not appear in the procurement record and is not reflected in the testimony of the evaluators. GPA's Opposition does not challenge that GPA evaluated the offerors under § 5 of the RFP, instead of §2.3 which explicitly set the "Standards for Determination of Most Qualified Offeror." ROA, p. 1361 (Decision, OPA-PA-21-012, p. 6 L7-23); Transcript of Proceedings, 11-15; 20-22.

While GPA may be able today, with the benefit of hindsight, to recreate a link between §5 of the RFP with the criteria of §2.3, **the fact remains that its evaluators and procurement record made no such connection.** GPA's representatives at the evidentiary hearing disagreed that §2.3 of the RFP was the criterion by which the offerors were to be evaluated. *See*, Transcript of Proceedings, 22. In testimony that varies from the *post hac* correlation provided by GPA in its opposition, no evaluator could provide during the OPA trial an explanation for GPA's election to utilize § 5.0 instead of § 2.3 to determine the most or best qualified offeror. During the course of the evidentiary hearing, the witnesses also agreed that the RFP's use of two (2) separate evaluation criteria lists rendered the RFP confusing to the offerors. *See*, Transcript of Proceedings, (John Kim) 22-25. GPA's opposition does not contest this fact. It would be clearly erroneous to allow GPA to adopt today a connection between § 2.3 and §5.0 of the RFP that GPA both refused to connect during the OPA evidentiary proceedings and failed to connect in the procurement record itself. *United States v. US. Gypsum Co.*, 333 U.S. 364, 395 (1948).

#### **B. GRAPHIC CENTER EXHAUSTED ITS ADMINISTRATIVE PATHWAYS.**

GPA is correct that *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth* (2020 Guam 20) contemplates the existence of multiple protests related to the same procurement brought by the same offeror. GPA insists that Graphic center should have protested separately the particular issue of the missing **exhibit A** from the competing offeror's bid package. GPA is incorrect, in that it fails to recognize that Graphic Center raised the document non-responsiveness issue from the first instance.

On August 11, 2021, GPA selected Infosend for Award of the RFP. See ROA, p. 1359 (Decision, OPA- PA-21 -0 12, ¶17). GPA notified Graphic Center of the intended award to Infosend seven days later on August 18, 2021. ROA, p. 1359 (Decision, OPA-PA-21-012, 17). On August 30, 2021, Graphic Center submitted its agency level protest. ROA, p. 77. The protest challenged the GPA determination that Infosend was the best qualified responsive offeror since the plain language of RFP required that all offerors provide all required forms of the RFP ROA, p. 1-3. The missing Exhibit A would fall under this protest ground.<sup>1</sup> While Graphic Center's October 14, 2021, information request would reveal that Infosend's bid failed to include the needed Amendment and failed to answer the questions the Amendment propounded, the fact remains that the issue of a non-responsive bid from Infosend that lacked key documents had already made it through the administrative review process. There is no factual dispute that Infosend failed to include the required form in its response and consequently failed to answer the questions that the Amendment propounded.

**C. GPA'S PROCUREMENT RECORD DOES NOT COMPLY WITH LAW, AND DOES NOT JUSTIFY GPA'S PROCUREMENT DECISION.**

GPA provides no challenge to the fact that GPA contracting official Fejeran, testified that GPA granted Infosend an exemption from submitting the Amendment which prevented disqualification. Verified Complaint, ¶47. GPA also provides no challenge to the fact that there is no record, public or otherwise, of GPA granting the claimed exemption to Infosend. Guam law mandates that "each procurement officer shall maintain a complete record of each procurement." 5 G.C.A. § 5249. That was clearly not done here. Guam law categorically and independently prevents an award when the material record of the procurement was not properly maintained. Under Guam law, "a complete procurement record is required by law for an award," *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 35 (Guam May 14, 2018), *citing* 5 G.C.A. § 5250.

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<sup>1</sup> Graphic Center also disputed the inconsistent evaluation scoring conducted by GPA that was inconsistent with § 2.3. ROA, p. 1-3.

#### D. CONCLUSION

Due to the vapid record supporting the evaluation and award to Infosend, Graphic Center respectfully requests that this Court issue an order declaring that the award to Infosend is unlawful, and that Graphic Center, as the lowest-priced, fully responsive bidder, should be awarded the contract. Alternatively, the Court should remand the matter for further investigation and development of the record by the agency.

***Respectfully submitted*** on this 11th day of October 2024.

**RAZZANO WALSH & TORRES, P.C.**

By:   
**JOSHUA D. WALSH**  
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Attorney for Defendant, Guam Power Authority

5  
6 IN THE SUPERIOR COURT OF GUAM

7 GRAPHIC CENTER, INC.

8 Plaintiff,

9 vs.

10 OFFICE OF PUBLIC ACCOUNTABILITY,  
11 GUAM POWER AUTHORITY, THE  
12 TERRITORY OF GUAM, AND INFOSEND,  
INC.,

13 Defendants.  
14  
15

CIVIL CASE NO. CV0207-22

ANSWER TO COMPLAINT

16  
17 COMES NOW, Defendant GUAM POWER AUTHORITY ("GPA"), by and through  
18 their Counsel of Record, D. GRAHAM BOTHA, ESQ., and hereby answers the Plaintiff's  
19 Complaint as follows:  
20

21 1. Defendant GPA admits paragraphs 1, 2, 3, 5, 6, 7, 10, 12, 13, 14, 15, 16, 18, 20, 21,  
22 22, 23, 29, 30, 34, 37, 43 and 44 of Plaintiff's complaint.  
23

24 2. Defendant GPA denies paragraphs 9, 11, 24, 25, 27, 28, 31, 32, 33, 36, 39, 42, 45, 46,  
25 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 60, 61, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73 and 74 of  
26 Plaintiff's complaint.  
27

28 3. Defendant GPA denies all allegations not specifically admitted in this answer.

29 4. Concerning Plaintiff's allegations in Paragraph 4 of the Plaintiff's complaint, GPA  
30 admits that part of the allegation alleging that "Infosend's response did not contain the  
31 Amendment", and denies each and every remaining allegation contained in paragraph 4.  
32



1           5. Concerning Plaintiff's allegations in Paragraph 8 of the Plaintiff's complaint, GPA  
2 admits that part of the allegation alleging that "On August 30, 2021, Graphic protested  
3 Infosend's selection as the best qualified" and "GPA denied Graphic's protest on October 7,  
4 2021. See Decision, OPA-PA-21-012, ¶21", and denies each and every remaining allegation  
5 contained in paragraph 8.  
6

7           6. Concerning Plaintiff's allegations in Paragraph 17 of the Plaintiff's complaint,  
8 defendant admits that part of the allegation starting with "issued a Request for Proposal GPA-  
9 RFP-21-002 ("RFP") on May 13, 2021 seeking offerors to provide GPA Professional Printing,  
10 Mailing and Processing Services Relating to Utility Customer Billing. GPA is a proper party and  
11 has waived sovereign immunity pursuant to 5 GCA §5480", but denies that GPA is an  
12 autonomous agency and states that pursuant to 12 GCA §8103, GPA is a public corporation of  
13 the Government of Guam. GPA also denies that the Territory of Guam is properly a defendant in  
14 this action, as the Territory of Guam is not a necessary or indispensable party. GPA further  
15 denies each and every remaining allegation contained in paragraph 17.  
16  
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18           7. Concerning Plaintiff's allegations in Paragraph 19 of the Plaintiff's complaint, GPA  
19 admits that part of the allegation alleging that "Infosend is an interested party in this  
20 procurement, and is a California company organized and existing under the law of the State of  
21 California", and denies each and every remaining allegation contained in paragraph 19.  
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24           8. Concerning Plaintiff's allegations in Paragraph 38 of the Plaintiff's complaint,  
25 defendant re-alleges and incorporates the answers provided in response to paragraphs 1-37 of  
26 Plaintiff's complaint.  
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1           9. Concerning Plaintiff's allegations in Paragraph 58 of the Plaintiff's complaint,  
2 defendant re-alleges and incorporates the answers provided in response to paragraphs 1-57 of  
3 Plaintiff's complaint.  
4

5           10. Concerning Plaintiff's allegations in Paragraph 66 of the Plaintiff's complaint,  
6 defendant re-alleges and incorporates the answers provided in response to paragraphs 1-65 of  
7 Plaintiff's complaint.  
8

9           11. Concerning Plaintiff's allegations in Paragraph 75 of the Plaintiff's complaint,  
10 defendant re-alleges and incorporates the answers provided in response to paragraphs 1-74 of  
11 Plaintiff's complaint.  
12

13           12. Concerning Plaintiff's allegations in Paragraph 26 of the Plaintiff's complaint, they  
14 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
15 required to respond, then GPA denies each and every such allegation contained in paragraph 26.  
16

17           13. Concerning Plaintiff's allegations in Paragraph 35 of the Plaintiff's complaint, the  
18 OPA decision speaks for itself, and GPA denies each and every other allegation contained in  
19 paragraph 35.  
20

21           14. Concerning Plaintiff's allegations in Paragraph 40 of the Plaintiff's complaint, they  
22 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
23 required to respond, then GPA denies each and every such allegation contained in paragraph 40.  
24

25           15. Concerning Plaintiff's allegations in Paragraph 41 of the Plaintiff's complaint, they  
26 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
27 required to respond, then GPA denies each and every such allegation contained in paragraph 41.  
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1           16. Concerning Plaintiff's allegations in Paragraph 54 of the Plaintiff's complaint, they  
2 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
3 required to respond, then GPA denies each and every such allegation contained in paragraph 54.  
4

5           17. Concerning Plaintiff's allegations in Paragraph 59 of the Plaintiff's complaint, they  
6 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
7 required to respond, then GPA denies each and every such allegation contained in paragraph 59.  
8

9           18. Concerning Plaintiff's allegations in Paragraph 62 of the Plaintiff's complaint, they  
10 contain legal conclusions to which GPA is not required to respond, and to the extent GPA is  
11 required to respond, then GPA denies each and every such allegation contained in paragraph 62.  
12

13           19. Defendant hereby denies any and all additional allegations in Plaintiff's complaint,  
14 including the prayer for relief, and any and all allegations not specifically referred to above.  
15

#### 16                           **AFFIRMATIVE DEFENSES**

17           20. Plaintiff fails to state a claim upon which relief may be granted.  
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19           21. Plaintiff fails to state a cause of action.  
20

21           22. Plaintiff's claims are barred by the doctrine of waiver.  
22

23           23. Plaintiff's claims are barred by the doctrine of laches.  
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25           24. Plaintiff has failed to exhaust its administrative remedies.  
26

27           25. Plaintiff failed to comply with Guam procurement law.  
28

#### 29                           **PRAYER FOR RELIEF**

30           **WHEREFORE**, Defendant respectfully requests for and prays that this Court:  
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32           26. Graphic Center's appeal be denied.

          27. The decision of the OPA in OPA-PA-21-012 be affirmed by the Court.

          28. Grant Defendant GPA its costs of suit.

1 29. Grant Defendant GPA such other and further relief as the Court deems just and  
2 proper.

3 **RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of June, 2022, by:

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6 

7 **D. GRAHAM BOTHERA, ESQ.**  
8 GPA General Counsel  
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